

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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

AGENCY: WV Division of Personnel TITLE NUMBER: 143

CITE AUTHORITY WV Code § 29-6-10

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Administrative Rules and
Regulations of the WV Division of Personnel

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

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

Michael T. Smith

17-80



Gaston Caperton
Governor

Michael T. Smith
Director

STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
DIVISION OF PERSONNEL

STATE PERSONNEL
BOARD

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

MEMORANDUM

TO: Chuck Polan, Cabinet Secretary
Department of Administration

FROM: Michael T. Smith, Director *Mike*

RE: Amendments to Administrative Regulations

DATE: September 17, 1992

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SECRETARY OF STATE

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

These amendments were presented to the State Personnel Board at their July 16th meeting for approval of the filing with the Secretary of State's Office and a public hearing on the proposed amendments was held on August 20, 1992. After the public hearing, the amendments, as well as any changes resulting from public hearing comments, were submitted to and approved by the State Personnel Board for filing with the Legislative Rule-Making Review Committee.

Your approval of the filing of these agency approved proposed amendments to our administrative rules and regulations is respectfully requested. Thank you.

Chuck Polan
Chuck Polan, Cabinet Secretary
Department of Administration
September 17, 1992

MTS:TMC/

DATE: September 17, 1992

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: WV Division of Personnel

LEGISLATIVE RULE TITLE: Administrative Rules & Regulations

1. Authorizing statute(s) citation WV Code § 29-6-10

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

July 17, 1992

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

Notice to state agencies and employee organizations

c. Date of hearing(s): August 20, 1992

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

Attached x No comments received

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

September 17, 1992

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

Michael T. Smith, Director

or Tari McClintock Crouse

558-3950

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

DIVISION OF PERSONNEL

Chapter 29-6-10
Series I
(1991) amended

Subject: Filing of Administrative Rules and Regulations of the
West Virginia Division of Personnel

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Section 1. General

1.01. Scope - These regulations establish rules for the
West Virginia Division of Personnel.

1.02. Authority - These regulations are issued under
authority of West Virginia Code, Chapter-29, Article-6, Section
29-6-10.

1.03. Filing Date - May-16, 1991.

1.04. Effective Date - May-16, 1991.

Section 2. Preamble

Sec. 2.01. Preamble. The general purpose of the Division
of Personnel is to attract to the service of this State personnel
of the highest ability and integrity by the establishment of a
system of personnel administration based on merit principles and
scientific methods governing the appointment, promotion,
transfer, layoff, removal, discipline, classification,
compensation, and welfare of its employees, and other incidents
of state employment. All appointments and promotions to
positions in the classified service shall be made solely on the
basis of merit and fitness. All employment positions not in the
classified service, with the exception of the Board-of-Regents
Higher Education Governing Boards, are included in a
classification plan known as classified-exempt service.

Section 3. Definitions

Accrue: To increase or accumulate periodically or by increment.

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

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.

Agency: Any administrative department of state government or a political sub-division established by law or executive order.

Allocation: The original assignment of a position to a class by the Director of Personnel on the basis of the kind, difficulty, and responsibility of the work performed duties performed and responsibilities assumed.

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

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

Appointing Authority: The executive or administrative head of a unit of state government 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.

Appointment: The act of hiring an applicant for employment.

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

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.

Board: The State Personnel Board as provided for in Section 7, Article VI, Chapter 29 of the Code of West Virginia whose members are appointed by the Governor with the advice and consent of the Senate.

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

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

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

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

Classification Plan: ~~The official lists of classes to plan~~ by which positions in the classified service and classified-exempt service have been allocated by the ~~Director of Personnel and the administrative regulations governing the administration of each plan~~ class.

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

Classified Employee: An employee whose ~~job is~~ occupies a position allocated to a class in the classified service.

Classified-Exempt Service: Those positions which satisfy the definitions for "class" and "classify" but which are not covered under the Division of Personnel or by the ~~Board of Regents~~ higher education governing boards.

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

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.

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

Covered-Agency:--An-agency-of-State-government-or-certain specific-positions-within-an-agency-either-designated-by-law-or executive-order-of-the-Governor-to-be-a-part-of-the-classified service.

Covered-Employee:--A-permanent-classified-employee-of-a-unit affiliated-with-the-Division-of-Personnel.

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.

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

Demotion: A change for cause in the status of an employee from a position in one class to a position in another class of lower rank as measured by salary range, minimum qualifications, or duties, or a reduction in an employee's pay to a lower step in the pay range assigned to the classification. The two types of demotions are: a) Disciplinary Demotion - A reduction in pay or a change in classification to a lower classification due to the inability of an employee to perform the duties of a classification or for improper conduct. b) Demotion Without Prejudice - A change in classification of an employee to a lower classification or a reduction of pay due to work necessity.

Director: The Director of Personnel, as provided in Section 6-and-9,-Article-VI,-Chapter-29,-of-the-Code-of-West-Virginia W.V. Code §29-6-6 and §29-6-9, who serves as the executive head of the Division of Personnel, or his designee.

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.

Discretionary: Open to individual choice or judgement.

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

Division: The Division of Personnel.

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

~~Docket:--List-of-employees-who-have-filed-an-appeal-or complaint-with-the-State-Personnel-Board.~~

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

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

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

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

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.

Exempt Service: All positions specifically exempted from the classified service as noted in Chapter 29, Article VI, of the Code of West Virginia (see Appendix B) by statute or statutory authority.

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

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

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

Grievance: Any claim by one or more affected State classified employees alleging a violation, a misapplication or a misinterpretation of the statutes, policies, rules, regulations or written agreements under which such employees work, including any violation, misapplication or misinterpretation regarding compensation, hours, terms and conditions of employment,

employment status or discrimination; any discriminatory or otherwise aggrieved application of unwritten policies or practices of their employer; any specifically identified incident of harassment or favoritism; or any action, policy or practice constituting a substantial detriment to or interference with effective job performance or the health and safety of the employees. Any pension matter or other issue relating to public employees insurance in accordance with article-sixteen, chapter five-of-this-code W.V. Code §5-16-1 et seq., retirement, or any other matter in which authority to act is not vested with the employer shall not be the subject of any grievance filed in accordance with the provisions of this article.

Handicapped:--A-person-who-has-a-physical-or-mental impairment-which-substantially-limits-one-or-more-of-such person's-major-life-activities;-has-had-a-record-of-such impairment-or-is-regarded-as-having-such-an-impairment-

Immediate Family: Consists of the father, mother, son, daughter, brother, sister, husband, wife, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandfather, grandmother, granddaughter, grandson, stepmother, stepfather, and stepchildren.

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

Increment: one of a series of regular consecutive increases between the minimum and maximum rates of a pay grade in an approved salary schedule.

Incumbent: A-person Any employee occupying a position.

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

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

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.

Irregular Part-time Employment: Employment in a position for which work hours which-are-not-symmetrical-from-week-to-week vary from payperiod to payperiod and are less than the full-time work schedule established by the agency.

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

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

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

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

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

Leave:--A-fringe-benefit-earned-by-employees-for-time-off from-work.

Length-of-Service-Category:--The-grouping-by-the-number-of years,-months,-and-days-of-eligible-employment-which-is-used-to determine-the-rate-of-accrual-of-annual-leave-benefits.

Local Facility Office: Any sub-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.

Longevity:--The-length-of-employment;-seniority.

Merit-Increase:--An--advancement-in-salary-granted-as-a reward-for--the-quality-of-work-performance.

Meritorious-Service:--Quality-of-work-performance-judged-to deserve-reward-or-honor.

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.

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

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

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

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

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.

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

Pay Rate: One of the fixed steps or increments listed included in a pay plan.

Per Diem: A daily allowance.

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.

Physician: A person licensed under the laws of a state to practice medicine.

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.

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.

Position Description: The document prepared by 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.

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

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.

~~Procedural-Due-Process:--A course of proceedings carried out regularly and in accordance with the rules and principles established in these regulations for the protection of employees' rights.~~

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.

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

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

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.

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.

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

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

Resignation: Voluntary separation from employment, including job abandonment, made-at-the-request-of-the by an employee.

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

Salary Advancement: A discretionary advancement in salary increase-within-the-salary-range-prescribed-for-the-class-based-on-meritorious granted in recognition of the quality of performance.

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

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

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

Shift-Differential:--The-payment-of-a-different-rate-of-pay-for-hours-worked-in-an-approved-class-during-prescribed-evening-and-night-shifts-

Step-for-Step:--The-movement-of-an-employee's-salary-to-the-same-or-corresponding-step-or-pay-rate-in-a-higher-or-lower-pay-grade-

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

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

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

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

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

Termination: Separation from employment by the appointing authority as a result of limited term employment.

Title Change: The revision in the title of a class by-the Board.

Transfer: The change movement of an employee from a position in a given class to a different position in the same class in to a different subdivision or geographic location of the same or a different agency.

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.

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

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

Veterans' Preference Points: An additional 5 points added to the final passing score of any veteran who has served in the armed forces of the United States of America during World War I (April 6, 1917, to November 11, 1918), World War II (December 7, 1941, to December 31, 1946), the Korean Conflict (June 27, 1950, to January 31, 1955), or the Vietnam Conflict (August 5, 1964, to May 7, 1975) and who has received a discharge under honorable conditions from such service as defined by these rules. 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.

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

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.

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

Section 4. Organization

4.01. Creation of division of personnel; sections.

(a) Effective the first day of July, one thousand nine hundred eighty-nine, there is hereby created a division of personnel within the executive branch.

(b) The division of personnel shall consist of the following sections:

- (1) Applicant services;
- (2) Classification and compensation;
- (3) Management development and training;
- (4) Program evaluation and payroll;
- (5) Employee services;
- (6) Employee relations; and
- (7) Administrative and staff services.

Each section shall be under the control of a section chief to be appointed by the director who shall be qualified by reason of exceptional training and experience in the field of activities of the respective section. The director has authority to establish such additional sections as may be determined necessary to carry out the purpose of this article. {19617-c7-1307-19777
1st-Ex7-Sess7-c7-57-19897-c7-29}

4.02. State personnel board created; members; term; quorum; vacancies; powers and duties.

(a) There is hereby created within the division a state personnel board which shall consist of five members appointed by the governor with the advice and consent of the Senate for terms of four years and until the appointment of their successors: Provided, That of the members first appointed, one shall be appointed for a term of one year, one for two years, one for three years and one for four years. No more than three members may be of the same political party. Three members of the board constitute a quorum.

(b) A member of the board may not be removed from office except for official misconduct, incompetence, neglect of duty, gross immorality or malfeasance, and then only in the manner prescribed in ~~article-six-(\$6-6-1-et-seq7)-chapter-six-of-this~~ code W.V. Code \$6-6 et seq. for the removal by the governor of state elected officers.

(c) Citizen members of the board shall each be paid one hundred dollars for each day devoted to the work of the board. Each member shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties,

except that in the event the expenses are paid, or are to be paid, by a third party, the members shall not be reimbursed by the state.

(d) The board shall elect one of its members as chairperson and shall meet at such time and place as shall be specified by the call of the chairman. At least one meeting shall be held in each month. All meetings shall be open to the public. Notice of each meeting shall be given in writing to each member by the director at least three days in advance of the meeting period.

(e) The director or the board may subpoena and require the attendance of witnesses in the production of evidence or documents relevant to any proceeding under this article.

4.03. Duties of the Board

(a) In addition to other powers and duties invested in it by this article or by any other law, the board shall:

(1) Promulgate rules in accordance with ~~chapter twenty-nine-a-(W.V. Code §29A-1-1 et seq.)-of-this-code~~ to implement the provisions of this article;

(2) Interpret the application of this article to any public body or entity;

(3) Authorize and conduct such studies, inquiries, investigations or hearings in the operation of this article as it deems necessary.

(4) Represent the public interest in the improvement of personnel administration in the classified service.

(5) Advise the governor, the secretary, and the director on problems concerning personnel administration.

(6) Foster the interest of institutions of learning and of industrial, civic, professional and employee organizations in the improvement of personnel standards in the classified service.

(7) Make any investigation which it may consider desirable concerning the administration of personnel in the classified service and make recommendations to the director with respect thereto.

(8) Approve the budget as prepared by the director for administration of this article before submission to the division of finance and-administration.

4.04. Director of personnel; appointment; qualifications; powers and duties.

(a) The secretary of the department of administration shall appoint the director. The director shall be a person knowledgeable of the application of the merit principles in public employment as evidenced by the obtainment of a degree in business administration, personnel administration, public

administrator or the equivalent and at least five years of administrative experience in personnel administration.

(b) The director shall:

(1) Consistent with the provisions of this article administer the operations of the division, allocating the functions and activities of the division among sections as the director may establish;

(2) Maintain a personnel management information system necessary to carry out the provisions of this article;

(3) Supervise payrolls and audit payrolls, reports or transactions for conformity with the provisions of this article;

(4) Plan, evaluate, administer and implement personnel programs and policies in state government and to political subdivisions after agreement by the parties:

(5) Supervise the employee selection process and employ performance evaluation procedures:

(6) Develop programs to improve efficiency and effectiveness of the public service, including, but not limited to, employee training, development, assistance and incentives;

(7) Establish pilot programs and other projects for a maximum of one year outside of the provisions of this article, subject to approval by the board, to be included in the annual report;

(8) Establish and provide for a public employee interchange program and may provide for a voluntary employee interchange program between public and private sector employees;

(9) Establish an internship program;

(10) Assist the governor and secretary of the department of administration in general work force planning and other personnel matters;

(11) Make an annual report to the governor and Legislature and all other special or periodic reports as may be required;

(12) Assess cost for special or other services;

(13) Recommend rules to the board for implementation of this article; and

(14) Conduct schools, seminars or classes regarding handling of complaints, disciplinary matters and operation of the state personnel board for supervisory employees of the state.

4.05. State Personnel Advisory Council

(a) There is hereby created the state personnel advisory council, which consists of eleven members appointed by the governor. Six members shall be classified employees and two, classified-exempt employees. Of the remaining three members, one shall be appointed from a list of three persons recommended by the American federation of state, county and municipal employees; one, from a list of three persons recommended by the communication workers of America; and one, from a list of three

persons recommended by district 1199, national union of hospital and health care employees, AFL-CIO. Members of the council shall serve for a term concurrent with that of the governor.

(b) The state personnel advisory council shall:

(1) Advise the director and the board in the development of comprehensive policies and programs for the improvement of personnel administration in the state:

(2) Assist in the formulation of rules and standards relating to the state system of personnel administration:

(3) Assist in the promotion of public understanding of the purposes, policies and practices of the state system of personnel administration.

(c) Members of the council shall receive no compensation, but shall be reimbursed for their actual and necessary expenses.
{1989-cv-29-}

Section 5. Classification Plans

5.01. 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 position an appropriate title, a description of the duties and responsibilities, and the minimum requirements of training, experience, and other qualifications.

5.02. Revision of Plans - Existing classes of positions may be abolished or changed, or new classes added, in the same manner as the classification plans were originally adopted.

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

5.04. Class Specifications - The class specification shall be considered in allocating positions and shall be interpreted 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 shall be, 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 shall not be taken to 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 knowledges 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 herein, 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.

5.05. 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 shall be 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 Chapter-29-6A-of-the-Code-of-West Virginia, W.V. Code, §29-6A et seq., as amended.

5.06. Position Reallocation - Whenever substantial changes occur in the duties and responsibilities assigned to a position or to correct a position misclassification, the Director shall reallocate the position to its proper class. The incumbent or the appointing authority may seek a reconsideration of the allocation action by submitting a written request to the Director within ten (10) calendar days of the effective date of the action and shall have the right to a review of the action under the procedure established in Chapter-29-6A-of-the-Code-of West-Virginia W.V. Code §29-6A et seq., as amended.

Section 6. Compensation Plan and Salary Regulations

Pursuant to the provisions of the West Virginia Code §29-6-10(2), the following salary regulations shall apply to classified employees covered-by-the-Division-of-Personnel.

6.01. 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 state agencies and on comparability to pay rates established in other public and private agencies and businesses. The intent of the Board is to recommend to the Governor a pay plan with annual adjustments for cost-of-living increases and additional funds for merit increases.

6.02. Preparation of Plan - After consultation with the appointing authorities and State fiscal officers and after a public hearing, the Director and the Board shall prepare and submit to the Governor for his approval an annual revision of the pay plan. The pay plan shall include salary schedules containing multiple pay grades with initial minimum, intervening, and maximum rates of pay for each grade and a plan of implementation. Periodic amendments to the pay plan may be made in the same manner.

6.03. Adoption of Plan - The plan shall become effective only after it has been approved by the Governor. The approved pay plan shall constitute the official schedule of salaries for the classified service.

6.04. Implementation of Plan

(a) Assignment of Classes - The Board 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 qualifying 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 step increment above the minimum, the individual must have in excess of the minimum requirements at least six months of qualifying pertinent experience or equivalent qualifying 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. It provides standard pay rates for full-time employees for regularly established working hours in all offices and departments. The salary or wage paid shall be determined by the pay grade to which the classification of the position has been allocated. All employees, including those serving in positions on a part-time basis, shall be paid in proportion to the actual time worked.

(d) Additional Pay - Except for authorized overtime or ~~shift differential~~ Board approved pay differentials, 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.

~~Upon approval by the Board, the appointing authority may provide additional pay for certain classes based on rate of work or other specifically quantified measures of employee productivity. Employees in that agency in classes approved for this pay provision shall not be eligible for salary advancements.~~

(e) Availability of Funds - Before a department makes salary adjustments and advancements in accordance with these regulations, its fiscal officer shall certify that funds for this purpose are available.

(f) Salary Adjustments

1. New Plan

a. Upon adoption of a new pay plan, each incumbent's salary shall be adjusted to the step pay rate in the new plan corresponding to his step pay rate in the old plan. If it is impossible due to budgetary restrictions to adjust an incumbent's pay on a step-for-step corresponding basis, the Board shall provide-for require and may approve or modify a plan of application which assures as nearly as possible that the pay of all incumbents in the classified service shall receive equal treatment (~~i.e., one-step, two-steps, etc.~~).

~~b. When the salary ranges of a new pay plan do not have the number of steps corresponding to the old plan, each incumbent's salary shall be adjusted to the next higher rate in the appropriate salary range.~~

eb. An incumbent whose salary falls above the maximum rate of the new range shall maintain his current salary and shall be 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 step pay rate in the new range, the salary shall remain unchanged.

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

b. Lower Minimum

1. When a class is assigned to a salary range having a lower minimum, the salaries of those incumbents which

coincide with a step pay rate in the new range shall remain unchanged.

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

3. Where the salary of the incumbent is above the maximum rate of the new range, the salary shall remain unchanged and the incumbent shall be 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. Separation from Employment - ~~An employee who separates from state employment (by dismissal, resignation, layoff, termination, retirement, death) prior to the date a new pay plan becomes effective~~ Salary adjustments shall not be 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 is are continued on the payroll beyond that date for annual leave payment is not entitled to salary adjustments.

6.05. Pay on Promotion

(a) Minimum Increase - The salary of an employee who is promoted shall be adjusted to the minimum pay rate of the new class. If the incumbent's current pay rate is at or above the minimum pay rate for the new class, but coincides with a step pay rate in the new range, the salary shall be adjusted one step increment in the range. Where the pay rate does not coincide with a step pay rate in the new range, the salary shall be adjusted to the next higher rate which provides at least a full step increment increase.

(b) Additional Increase - The appointing authority may grant additional steps incremental increases to an employee being promoted if the employee has sufficient qualifications in excess of the minimum required for the new class. The employee shall possess at least six months of pertinent experience or an equivalent amount of pertinent training for each additional step increment granted.

6.06. Pay on Demotion - An employee who is demoted and whose current pay rate is above the maximum pay rate for the new classification shall have a pay reduction to at least the maximum pay rate of the new classification. The employee's salary may remain the same if his pay is within the pay range of the new

classification, or his pay may be reduced to a lower step pay rate in the new range. If the employee's salary before demotion falls within the range for the lower class, but does not coincide with a step pay rate in that range, his salary shall be reduced at least to the next lower step pay rate in the new range.

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

6.08. --Pay-for-Shift-Differential

(a)-Eligibility---Any-employee-who-is-in-a-class-approved-by the-Director-of-Personnel-for-shift-differential-and-who-is required-to-work,-and-does-work,-an-assigned-shift-starting between-the-hours-of-2:00-p.m.-and-2:00-a.m.-inclusive-may-be paid-at-a-flat-rate-established-by-the-Board.--Shift-differential payments-shall-apply-only-if-at-least-one-half-the-scheduled hours-fall-between-the-hours-of-6:00-p.m.-and-6:00-a.m.-

(b)-Reassignment---When-an-employee-is-reassigned-to-a-shift or-class-for-which-shift-differential-has-not-been-approved,-the employee's-salary-shall-be-reduced-by-the-amount-of-the-shift differential-

6.09. Salary Advancements

(a) Upon-Merit Basis - All salary advancements shall be based on merit as reflected by service-ratings performance evaluations and other recorded measures of performance.

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

(c d) When-Made Effective Dates - The-initial-salary advancement-may-be-effective-when-an-employee-completes-the probationary-period-; Salary advancements for other permanent employees may be effective on or after the date on which they become eligible.

(d)-One-Step-Advancement---No-employee-shall-receive-a salary-advancement-of-more-than-one-step-in-the-salary-range-for the-class,-except-as-provided-in-paragraph-6.09(f)-

(e)-Salary-Advancement-Interval---Except-as-provided-in paragraph-6.09(f)-the-interval-between-salary-advancements-shall be-at-least-six-months-

(f c) Exceptionally-Meritorious-Service Amount - In-cases-of an-employee's-exceptionally-meritorious-service, salary advancements-of-more-than-one-step-in-the-range-or-at-intervals of-less-than-the-regularly-prescribed-period-are-permitted.- However, no-employee-shall-receive-salary-advancements-of Salary advancements shall be limited to no more than two steps increments, including advancements for exceptionally-meritorious service, in any twelve (12) month period.

6.4009. Longevity Increases - An employee with seven years of total state service who has attained the maximum in the range for the class without a salary increase in the immediately preceding twelve months shall be eligible for a longevity increase as prescribed in the adoption of a new pay plan.

Section 7. Applications and Examinations

7.01. Character of Examinations

(a) Examinations for entrance in the classified service will be conducted on an open competitive basis. Examinations shall be practical in nature, shall be constructed to reveal the capacity of the applicant for the particular position for which he is competing as well as his general background and related knowledges, and shall be rated objectively. A practical written test shall be included except when rendered impractical because of (a) exceptional qualifications of a scientific or a professional nature being required and (b) the need for ranking candidates being rendered unnecessary because of the absence of effective competition. In such exceptional cases an unassembled examination may be held upon recommendation of the Director and approval of the Board. Examinations may be either assembled or unassembled at the discretion of the Director and depending on the specific requirements of the job class.

(b) Examinations shall, to the extent possible, be developed on the basis of objective analysis of the job and with the participation of appropriate job experts in the affected agencies and may also include: 1--A a rating of training and experience for the more responsible professional, technical, supervisory and administrative positions; and, 2--A an oral examination for positions requiring frequent contact with the public or which involve important supervisory or administrative duties. However, after consultation with the agency, the Director, with the approval of the Board, may eliminate the oral examination for those classes of positions in which it is anticipated that the entire eligible register will be exhausted within a relatively short period.

(c) All examination scoring procedures shall be objective. The Director shall assign definite Test weights to each part of the examination prior to its public announcement 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. Qualified experts will work with the Director of Personnel in the preparation of examination material and in the rating of training and experience of applicants for professional positions. The Director of Personnel shall consult with each agency affected on general phases of examination procedure such as the determination of type of examination, and the choice of qualified experts from outside the agency.

7.02. Notice of Examinations

(a) The Director shall give public announcement of all entrance open competitive examinations for at least 15 days in advance of the closing date for receipt of applications. He shall make every reasonable effort to attract qualified persons to compete in these examinations. Notices of examinations shall be posted in important centers throughout the State and copies shall be sent to newspapers of State-wide circulation, radio stations, educational institutions, professional societies, public officials, and such other workers and individuals as the Director may determine expedient. Exceptions to the requirement that examination notices must be statewide may be made where the purpose of giving an examination is to supplement already existing registers as provided for in Section 8.02(b) and/or in order to conduct a continuous recruitment program as provided for in Section 7.03(b). In such cases, the notice 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, information as to the rates of pay at which appointments are expected to be made, the duties to be performed, the minimum qualifications required, the final date on which applications will be received accepted, and all other conditions of competition, including the relative weights assigned to the various parts in the examination and the fact that failure in one part of the examination will disqualify an applicant.

(b) In order to be eligible to be admitted to examinations, applicants must be citizens of eligible to work in the United States and (a) have been born in West Virginia or (b) have been legal residents of or domiciled in West Virginia for at least one year prior to the date of examinations, or (c) have maintained a legal residence and domicile in West Virginia for at least 10 years of his life, provided change to another state was made no earlier than one year prior to the date of examinations. The Board Director, at its his discretion, may waive citizenship and residence requirements.

7.03. Filing Applications

(a) All applications shall be made on forms prescribed by the director and ~~approved by the Board~~ and must be filed with the director Division on or prior to the closing date specified in the announcement or postmarked before midnight of that date. Such applications shall ~~include a statement from the applicant of all pertinent information regarding his training, experience, and age, and in addition, the Director may require a photograph of the applicant, a certificate of his physical fitness from one or more licensed physicians, and~~ 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 deem necessary. All applications shall be signed and sworn to (or affirmed) by the applicant.

(b) ~~For classes of positions for which recruitment is difficult, t~~ The Director, ~~with the approval of the Board,~~ may provide for continuous receipt of applications and for holding examinations as needed.

7.04. Disqualification of Applicants

(a) ~~Under the supervision and direction of the Board, t~~ The Director may refuse to examine an applicant, or after examination, may disqualify such applicant or remove his name from a register or certification, or refuse to certify any eligible on a register if:

1. he is found to lack any of the preliminary requirements established for the examination for the class of position;
2. he is so disabled as to be rendered unfit for the performance of the duties of the class;
3. he is addicted to the use of narcotics or the ~~habitual use of intoxicating liquors to excess;~~
4. he has been convicted of an infamous crime or other crime involving moral turpitude which has a reasonable connection to the position/class for which he is applying;
5. he has made a false statement of material fact or has misrepresented his qualifications in his application;
6. he has previously been dismissed from any public service for delinquency, misconduct, or other similar cause;

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

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

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

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

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

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

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

14. he has otherwise violated provisions of this rule.

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

(c) A disqualified applicant shall be promptly notified of such action, and an applicant who is not admitted to an examination because of failure to meet the preliminary requirements shall be so notified by letter to his last-known address sufficiently in advance of the examination to allow for

~~an appeal from rejection as provided in Section 14.01 of this rule.~~

7.05. 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 7.03(b) of this rule. The Director may designate such monitors as may be necessary to conduct examinations under instructions prescribed by him, and may also arrange for the use of public buildings in which to conduct the examinations. The Director shall provide for the compensation of monitors and assistants in accordance with the approved budget for the purpose.

~~(b) The identity of persons taking competitive assembled examinations shall not be disclosed to the examiner. An identification number, which shall be used to identify all papers of each applicant, shall be assigned by the director to each applicant. Any examination papers bearing the name of the applicant or identification other than an identification number shall be rejected. In cases of rejection the director shall promptly notify the applicant present personal identification which includes a signature/photograph prior to admission to an examination. Applicants without proper identification shall not be admitted to examinations.~~

7.06. Rating Scoring Examinations

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

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

(c) The Director, ~~with the approval of the Board,~~ shall utilize appropriate scientific techniques and procedures in rating the results of examinations and in determining the final scores of competitors. ~~In determining the system for rating results on the examination, the Director and the Board shall give due regard to the number of candidates and to the number of vacancies which may reasonably be expected to occur in the life of the register.~~

7.07. Rating Training and Experience - If training and experience form a part of the total examination, the Director, with the approval of the Board, shall determine a procedure for the evaluation of the training and experience qualifications of the various applicants. The formula used in appraisal shall give due regard to may include an evaluation of the recency and quality as well as quantity of experience and to the pertinency of the training. This procedure shall allow for the substitution of training for experience and experience for training, within the limits stated in the class specifications.

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

7.09. Oral Examinations - When an oral examination forms part of a total examination for a position, the Director shall, with the approval of the Board, appoint one or more Oral Examination Boards as needed. An Oral Examination Board shall consist of two or more members, not more than one of whom shall be from any one agency, who shall be known to be interested in the improvement of public administration and in the selection of efficient government personnel and at least one of whom shall be technically familiar with the character of work in the position for which the applicant will be examined. 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. If practicable, all applicants qualifying for the oral examination for the same class shall be rated by the same Oral Examination Board. A member of an Oral Examination Board shall disclose each instance in which, by knowing an applicant personally, he would be prejudiced either for or against the applicant, in which case he shall not rate such applicant.

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

7.11. Special Examination - No applicant shall be given a specially-administered examination unless the Board by formal and recorded action finds that the applicant's failure to take or complete an examination was due to an obvious error for which the Director or any of his assistants is responsible. A make-up examination, administered along with a subsequent examination series, may be allowed by the Board provided the Director certifies that it is administratively practicable. The Board's findings and recommendations shall be recorded in its minutes. No claim for a specially-administered or make-up examination shall be allowed unless it is filed in writing with the Board within 10 days after the date of the original examination. Any specially-administered or make-up examination shall be constructed on a pattern similar to the original examination. The Director may modify examination procedures to afford reasonable accomodation to otherwise qualified disabled applicants.

7.12. Physical Examination - Before appointment applicants may be required to pass a satisfactory physical examination.

7.132. Examination Records - The Director shall be responsible for the maintenance of all records pertinent to the examination program in accordance with official retention schedules and shall hold such records in confidence as specified in W.V. Code §29-1-1 et seq. Applications and other necessary examination records shall be kept permanently, but examination records of other applicants, not appointed, may be destroyed 30 days after the register expires. All notices of changes of address shall be filed by applicants and eligibles with the Director.

Section 8. Registers

8.01. Establishment of Registers -

(a) Competitive registers: After each examination, the Director shall prepare a register of persons with passing grades. The names of such persons shall be placed on the register in the order of their final ratings starting with the highest. If two or more eligibles have final ratings which are identical, their names shall be arranged on the register in the order of their ratings on the written part of the examination. If these are the same, their names shall be arranged on the register in the order in which their applications were received, and if that be the same, then alphabetically.

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

8.02. Duration of Registers

(a) Competitive Registers: The life of each scores on a register shall be not longer than three years from the date of its establishment, but this period may be reduced by the Director with-the-approval-of-the-Board. A register may be deemed by the Director to be exhausted if fewer than three available eligibles remain on the register. Upon the exhaustion of a register, or if the Director, with-the-approval-of-the-Board, reduces the life of a register, he shall notify each eligible remaining on such register to this effect by mail to his last-known address.

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

~~(b)-The-Director-may-declare-a-register-depleted-even-though not-exhausted,-if-there-are-one-or-more-areas-in-the-state-for which-there-are-no-available-eligibles,-or-if-the-register-is-so near-the-point-of-exhaustion-that-renewed-recruiting-and examination-appears-to-be-required-to-prevent-the-register-from becoming-exhausted.--In-either-of-these-events,-the-Board-may authorize-a-new-examination-for-the-class.--Persons-whose-names are-on-the-depleted-register-shall-be-given-an-option-of-taking the-new-examination-or-retaining-their-positions-on-the-depleted register,-but-once-the-option-is-exercised,-it-shall-be-adhered to.--In-establishing-the-new-register,-the-Director,-with-due regard-to-the-three-year-limitation,-shall-combine-or-integrate the-names-of-those-remaining-on-the-depleted-register-with-the names-of-those-who-took-the-more-recent-examination-~~

(c) It shall be 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 shall be responsible for determining the adequacy of existing registers and for the establishment and maintenance of appropriate registers for all positions exclusive of exempt positions.

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

1. Changes in the minimum qualifications or classification standards of a class of positions.
2. Abolishment of the class for which the register was established.
3. Substantial revision of the examination used to establish the register.

(e) When a register is declared null and void by the

director the affected persons shall be notified of such action in writing at their last known address.

8.03. Removal of Names from Registers

(a) Competitive Registers: Under the supervision and direction of the Board, -t The Director may remove the name of an eligible from a register:

1. for any of the causes stipulated in Section 7.04(a) of this rule.

2. on evidence that the eligible cannot be located by reasonable efforts through the various means of communications letter to his last known address.

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

4. if ~~two~~ an offers of a probationary appointment for the class for which the register was established in a location for which he has declared himself available have 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 8.03(a) of this rule.

2. upon appointment to a classified position.

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

(c) The Director shall notify the eligible by mail to his last-known address of this action and the reasons therefor. All notices of changes of address shall be filed in writing by eligibles with the Director. An eligible's name shall be reinstated on the register upon showing of cause satisfactory to the Director or in accordance with a decision of the Board upon appeal as provided in Section 14.02 of this rule.

Section 9. Certification of Eligibles

9.01. 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.

9.02. Certification Methods

(a) Upon receipt of a requisition, the Director shall first certify and submit in-writing to the appointing authority the names of available persons on from the appropriate original 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, at the same time, from the appropriate promotional register, if such a register exists. The number to be certified and submitted will be governed by the following sub-paragraphs. Nothing in the following sub-paragraphs shall be construed as altering the exhaustion point of a register as described in Section 8.02(a) of this rule.

1. If only one position is involved, the 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, except as provided for in sub-paragraph (b). The Director may certify more additional names at his discretion.

2. If more than one position is involved, the Director may, with Board approval, certify the names of the highest available eligibles equal in number to six times the number of positions to be filled or the names of any persons scoring at or above the ninetieth percentile, whichever is greater.

3. If the original competitive register established as a result of a Division of Personnel examination for a specific class of position is exhausted, the Director shall may certify and submit names from the appropriate promotional register only, until it is exhausted. If both the original register and the appropriate promotional registers are exhausted, then the Director, with the approval of the Board, shall certify and submit names from the register, or registers, most appropriate. If there is no register which the Director, with the approval of the Board, deems appropriate, then the Director may certify and submit names from a register established as described in Section 8.02 of this rule.

(b) If an eligible receives a probationary or permanent appointment, such appointment shall constitute for its duration, a waiver of his right to certification from any other register on which his name appears for a class of position, the salary of

which is either equal to or lower than that salary covered by his appointment, unless at the time of such appointment he requests in writing that his name be retained for certification from such register or registers. If a laid off permanent classified state employee receives a probationary or permanent appointment to a classified position, that employee shall no longer be eligible for appointment from any such preference register.

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

(d) If in the exercise of his choice provided under Section 10.02 the appointing authority passes over the name of an eligible on a competitive register in connection with three separate appointments he has made from the register, written request may be made of the Director that the name of such eligible be omitted from any subsequent certification of the same appointing authority from the same competitive register. The name of such eligible shall thereafter not be certified to him from that register for future vacancies in that class of position, or from subsequent registers established for that class of position. However, upon change of the person occupying the position of appointing authority, the Director shall reinstate the name of such person for certifying purposes and shall so inform the agency. If, subsequently, the eligible is interviewed by the agency and rejected once for the same position, his name shall not again be certified for that position to that agency during the tenure of the then incumbent appointing authority.

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

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

9.03. Local Office Certification

(a) Eligibles for positions in state and local offices shall be certified in the manner described in Section 9.02 except that in filling a position in a local office, the appointing authority may request the certification of eligibles who are residents of

the area established by the Agency for such local office. Upon receipt of such a requisition, the Director shall certify and submit the names of eligibles as provided in Section 9.02 of this rule except that the Director shall certify and submit the names of the highest available eligibles who are residents of the area established by the Agency for the local office in which the vacancy exists,--in-accordance-with-the-following-procedure:.

1.--iIf,--in-certifying-and-submitting-the-names-of-such eligibles-for-a-vacancy-in-a-local-office, the Director finds that there are fewer than five such eligibles who are residents of the local-office area, he shall certify and-submit the names of such eligibles who are residents?.

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

3.--iIf there are then insufficient eligibles, certification shall be made on a statewide basis.

9.04. Corrections of Errors

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

(b) In the event a name is certified in error and the error is discovered after one of the named applicants is notified that he or she is appointed but prior to the effective date of the appointment, the certification and appointment will be withdrawn as in (a) above unless:

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

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

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

Section 10. Appointments

10.01. 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 these rules.

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

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

(e) In making the appointments provided for in Section 10.01(c) and (d) of this rule it shall be optional with the appointing authority whether to count employment in the agency immediately prior to such appointments as part or all of the probationary period required under Section 11 of these rules.

The appointing authority shall promptly report to the Director his decision on this matter for the records.

10.02. Original Appointments

(a) All original appointments to positions exclusive of exempt positions shall be made in accordance with this rule. Selection shall be made for each position first from the eligibles of appropriate preference registers. Upon exhaustion of the preference register, selection shall be made for each position from the top ten names or any persons scoring at or above the ninetieth percentile on the register, as determined by Section 9.02 of this rule exclusive of the names of those who failed to answer or who declined appointment or of those names to whom the appointing authority offers an objection in writing based on Section 7.04 of this rule which objection is sustained by the Director ~~with the approval of the Board.~~

(b) In selecting persons from among those certified, the appointing authority shall be permitted to examine their applications and reports of investigations and to interview them. Final selection shall be reported in writing by the appointing authority to the Director.

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

10.03. 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 ~~appropriate promotional register or~~ 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 such person's qualifications have been certified by the Director as meeting the minimum qualifications as to training and experience for the position, such person may be provisionally appointed to fill the existing vacancy until an appropriate register is established and appointment made therefrom. No provisional appointment shall be

made until the position has been classified and minimum qualifications established therefore in accordance with this rule. No provisional appointment shall be continued for more than thirty days after an appropriate register has been established for the class of position and in no event for more than 6 months from the date of appointment, nor shall successive provisional appointments of the same person be permitted, nor shall a position be filled by repeated provisional appointments.

(b) ~~A 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.~~ Employees not covered by Section 10.02 of this rule and all appointments made without register subsequent to the effective date of this rule but prior to the holding of examinations shall be regarded as provisional appointments.

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

10.04. Intermittent Appointments

(a) ~~The Director shall prepare lists, composed of the names of persons who have been permanent, probationary, or temporary employees appointed in accordance with this rule for at least three months. Such lists, arranged according to classes of positions, shall be known as reserve lists. If the work of the agency demands the services of a person for intermittent periods, the appointing authority may select a person from a reserve list for a class of position. An appointment may be made to a vacancy in the specific class of position for which the reserve list was established, as well as to a vacancy in a lower class of position, without regard to the standing of the persons on the reserve list, and without prior clearance with the Director. An intermittent appointment to a higher class of position, however, shall not be made from any list of a lower class of position. When the reserve lists become exhausted, appointments shall be made in accordance with other provisions of this Section.~~

(b) The Director shall also prepare lists of names of persons who have successfully passed an examination for the ~~intermittent~~ positions. Such lists shall consist of the names of the successful candidate arranged in the order of final scores on the examination. Selection shall be made for each position from the ten highest available names on the list or from the names of any persons scoring at or above the ninetieth percentile. Once a person has received an intermittent appointment in accordance with this paragraph he may be given successive intermittent appointments without regard to standing on the list.

(c)(b) In no case shall intermittent employment of an individual continue for more than six-months 945 hours worked in any twelve-month period beginning with the date of the original intermittent appointment, nor shall intermittent employment be followed by temporary employment.

~~10.05---Emergency-Appointments---In-the-event-of-an emergency-which-requires-immediate-addition-of-personnel-with such-urgency-that-appointment-under-other-provisions-of-these rules-is-not-feasible, the-appointing-authority-may-make-an emergency-appointment-without-regard-to-other-provisions-of-these rules.--In-no-case-shall-a-person-be-employed-under-emergency appointment-for-more-than-30-calendar-days-during-any-twelve-month-period.--The-appointing-authority-shall-immediately-report each-emergency-appointment-to-the-Director-in-writing-with explanation-of-the-nature-of-the-emergency.~~

10.065. Temporary Appointments - If an employee is needed for a temporary period, a certification shall be made by the Director of the names of those eligibles in the order of their places on an appropriate competitive register who have indicated willingness to accept temporary employment. Certification shall be made in the manner as prescribed in Section 9. Appointments shall be made in the same manner as prescribed in this rule for probationary appointments. 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 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 temporary employment be followed by intermittent employment.

10.076. 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 posting-of-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 shall have the right to initiate a grievance as provided for in Chapter 29-6A of the West Virginia Code, as amended. (See Appendix-A-er-State-Employees-Grievance-Handbook)-

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

Section 11. Probationary Period

11.01. Nature, Purpose, and Duration

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

(b) All original appointments to permanent positions shall be made from officially promulgated registers for a probationary period of not more than one year. The Board shall fix the length of the probationary period for each class of position. The appointing authority shall notify the Director of Personnel when a probationary period has been completed and permanent status has

been granted. The provision shall not be construed to prohibit application of time served in a provisional status to completion of a probationary period. The period of provisional appointment may apply toward completion of the probationary period only for that part served continuously, in the same class, and immediately prior to an original appointment. However, it shall be the responsibility of the appointing authority to state in writing at the time permanent status is being granted that such time served in a provisional status has been applied toward completion of a probationary period. Permanent appointment of a probationary employee shall begin with the date ending the probationary period.

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

11.02. 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 value of the employee's services and shall should include a service rating upon-a-form in conformity with the system of performance evaluation prescribed by the Director of Personnel. In the event it is determined that the services of the employee shall be retained, the appointing authority shall notify the employee and the Director of Personnel of the action no later than the last day of the probationary period. ~~In-the-event-it-is-determined that-the-employee's-services-are-to-be-terminated,-the-employee shall-be-notified-of-the-action-in-writing-at-least-15-days-in advance-of-the-date-his-services-are-to-be-terminated-~~

(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. ~~In-the-event-the-appointing-authority-notified-a-probationary employee-that-his-services-are-to-be-terminated,-and-if-said notice-is-given-before-the-date-that-would-have-otherwise-been the-last-day-of-the-probationary-period-but-less-than-15-days-in advance-of-that-date,-the-probationary-period-shall-be-extended 15-days-from-the-date-of-the-notice---The-last-sentence-shall-not apply-to-employees-serving-a-12-months-probationary-period-~~

~~11:03---Promotions-during-Probation---The-serving-of-a probationary-period-shall-not,-of-itself,-prevent-an-employee from-being-promoted-to-a-position-in-a-higher-class,-provided-he is-certified-from-an-appropriate-register-for-such-higher-class of-position-in-accordance-with-the-provisions-of-Section-9---If, within-the-above-mentioned-limitations,-an-employee-is-promoted~~

~~in this way during a probationary period, the probationary period for the class of position to which he is promoted shall begin with the date of appointment to such latter class of position.~~

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

11.054. Transfers during Probation - An employee shall not be transferred during his probationary period to a position in another class for which a preference or competitive register exists, nor may an employee, certified to a vacancy in a local office on a strictly local-area basis in accordance with the provisions of Section 9.03, be transferred from that local office to any other office or class for which a preference or competitive register exists ~~until at least 60 days after his appointment from the local-area register.~~

11.065. Dismissal during Probation

(a) If at any time during the probationary period, it is determined the services of the employee are unsatisfactory, the employee may be separated dismissed from the service, but such action shall take place only after the person to be discharged dismissed has been presented with the reasons for such discharge dismissal or reduction stated in writing, and has been allowed a reasonable time to reply thereto in writing or upon request to appear personally and reply to the head of the department or his deputy. The statement of reasons and the reply shall be filed as a public record with the Director. Notification of the termination of his services dismissal shall be given to the employee 15 calendar days prior to the effective date of his release dismissal, and no further salary shall be paid to him except in payment for accrued annual leave. If the fifteen days notice is given on or before the last day of the probationary period, but less than fifteen days in advance of that date, the probationary period shall be extended fifteen days from the date of the notice and the employee shall not attain permanent status. The prior sentence shall not apply to employees serving a twelve month probationary period. Fifteen days notice shall not be required for employees in certain classes where the Board holds by formal action that the public interests are best served by withholding such notice, and shall be at the discretion of the

appointing authority for employees in any class when the cause of dismissal is gross misconduct.

(b) ~~The Director, with the approval of the Board and after consultation with the appointing authority,~~ may restore the name of a probationary appointee ~~whose services have been terminated who has been dismissed~~ to the register from which he was certified, in accordance with procedure described in Section 13.08, but the Director shall not in the future certify the name of such person to the same appointing authority from the same register.

Section 12. Promotions, Demotions and Transfers

12.01. Method of Making Promotions

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

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

12.02. Promotion by Competitive Examination

(a) If it is determined by the appointing authority to fill vacancies in a particular class of position by promotion competitive examination, such 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 procedure for the determination of the passing grade shall be announced by the Director in advance of the examination, and shall take into consideration approved practices.

(b) All employees who receive a passing grade shall be placed on a promotional register for the class of position in order of their examination ratings.

(c) If a promotional and an original register exist, the same number of names shall be certified from each register in accordance with Section 9. The appointing authority may make his selection from the names submitted from either register, giving such preference to present employees as the good of the service will permit.

12.03. 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 12.02 of this rule, and if found to qualify for the class will be so certified by him.

12.04. Demotions - A permanent employee may be demoted for cause after ~~the person who is to be demoted has been being~~ presented with the reasons for such ~~reduction~~ demotion stated in writing, and has been allowed a reasonable time to reply thereto in writing, or upon request to appear personally and reply to the appointing authority or his deputy. The statement of reasons for the demotion and the reply shall be filed with the Director of Personnel. A probationary employee may be demoted as provided for in Section 11.04 of this rule.

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

12.06 Transfers

(a) Except as otherwise provided in Section 11.05, a transfer of an permanent employee from a position in one organizational sub-division of an agency to a position in the ~~same or comparable class in~~ another organizational sub-division of the same or another agency may be made at any time by the appointing authorities concerned. In the case of inter-agency transfers, annual and sick leave and all seniority rights shall be transferred with the employee.

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

~~12-06--Posting-Requirements-~~

~~The-vacancy-posting-requirements-described-in-Section-10-07 of-this-rule-shall-apply-to-all-classified-position-vacancies except-demotions-with-prejudice-and/or-transfers-for-cause, regardless-of-the-means-used-to-fill-such-vacancy-~~

Section 13. Separations, Tenure and Reinstatement

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

13.02. Dismissals - The appointing authority, fifteen (15) calendar days after notice in writing to a permanent employee stating specific reasons therefor, may dismiss any employee for cause. The employee 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 deputy. The reasons for dismissal and the reply, if any, shall be filed with the Director of Personnel. Fifteen days notice shall not be required for employees in certain ~~classes~~ cases when the public interests are best served by withholding such notice, and shall be at the discretion of the appointing authority for employees in any class case when the cause of dismissal is gross misconduct.

13.03. Suspension - The appointing authority, eight (8) calendar days after ~~may~~, upon oral notice confirmed in writing or by written notice, may suspend any employee without pay for cause or to conduct an investigation regarding an employee's conduct which has a job related adverse impact. 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 deputy. The eight (8) calendar day notice shall not be required for employess in certain cases when the public interests are best served by withholding such notice. The appointing authority shall file the statement of reasons for suspension and the reply, if any, with the Director of Personnel.

13.04. Layoff

(a) When it becomes necessary by reason of shortage of work or funds, or to permit reinstatement of employees on the release 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. (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.
3. a list of the employees in each class affected by the layoff in order of retention.

(bd) It shall be 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.

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

(db) 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.

(ef) Order of Separation. After the number of positions to be abolished has been determined and the organizational unit has been approved, the order of separation shall be applied in the following manner:

1. non-status employees in the same class or classes identified for layoff in the following order: emergency, ninety day exempt, 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 shall not be counted, but educational and military leave shall be counted.

(fg) 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 State-Personnel-Board Director shall develop the occupational groups in the classified service based on similarity of work and required knowledges, skills and abilities.

(gh) Recall. Recall shall be to the agency as a whole and in reverse order of the layoff to the class from which the employee was laid off or any lower class in the class series or to any class previously held in the occupational group. An employee shall remain on the recall list for the length of his or her tenure on the date of the layoff or for a period of two years, whichever is less. The agency shall first consider for reemployment those former employees whose names appear on the recall list for the class in which a vacancy has occurred and no original appointment of a new employee or reinstatement of a former employee shall be made to the class until all former employees on the recall list have been given first chance of refusal for of the vacancy. An employee shall be recalled onto jobs within the county wherein his last place of employment is located or within a county contiguous thereto. Any laid off employee who is eligible for recall to a position under these provisions shall be notified by certified mail of the vacancy. It shall be 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 qualified permanent classified employees based on seniority and fitness over all but existing employees of the agency or its facilities. Such preference shall not supersede the recall rights of employees who have been laid off in such agency. Preference hiring may be accomplished by either original appointment or reinstatement.

(hj) Salary Reductions for layoff. Salary reductions resulting from provisions of this subsection shall follow the salary regulations for pay on demotion. (See-Section-6-06-of this-rule)-

(ik) Reporting. The appointing authority shall report the names of all employees who are to be laid off to the Beard Director in writing no later than the date notification is mailed to the employee of such layoff. The-Board-shall-prepare-a-list of-employees-who-have-been-laid-off-and-shall-distribute-such lists-to-appropriate-agencies-where-persons-with-like-skills-are utilized-

(jl) An employee shall have the right to appeal a layoff action in accordance with Chapter-29,-Article-6A-of-the-Code-of West-Virginia W.V. Code §29-6-1 et seq, as amended.

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

13.06. Tenure of Office - The tenure of office of every permanent employee shall be during good behavior and the satisfactory performance of his duties as recorded by his service rating 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 in accordance with this rule.

13.07. 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 shall be eligible for reinstatement, provided he has been certified by the Director as meeting the current minimum qualifications as to training and experience of the class status of position to which he is being appointed. Prior to making such certification, the Director may require such employee to pass a qualifying examination.

(b) Provisional, probationary, or permanent employees who leave the classified state 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 are-entitled-to-reinstatement shall be reinstated to their former positions or to positions of like class, seniority and pay within 30 days following application provided that within 90 days after release from active military service such employees indicate in writing or in person to the agency their readiness and ability to return to classified state 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 may shall be granted all within-grade salary adjustments and may be granted salary advancements he would have received had he remained in active status in the State classified service, and he shall be credited with all annual, and sick, and compensatory-overtime leave accumulated and unused at the time the military leave began. It is understood that the regulations contained in this paragraph shall be uniformly applied to all veterans within an agency having had military leave and who return to the agency.

13.08. Reinstatement to Register

(a) A person who has had his name withdrawn from a register at his request may have his name reinstated on the currently effective register for the same position class provided the original register is still in effect and further provided that it has-not-exceeded-a-period-of-three-years his examination score is still valid. His rank on the register shall be determined by his final earned examination rating score.

(b) Reinstatement to a register as provided for in the foregoing paragraph shall be subject to the following condition:

1. The person petitioning such reinstatement shall make his request of 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 such a person pass an appropriate examination in the case of position classes requiring special skills.

3. No person may be reinstated to a register from which he has been or may be disqualified under any-one-of-these Division of Personnel Rules: 1 Sections 7.04, Section 8.03, or Section 9.02.

Section 14. Appeals

14.01. Appeal for Examination Rejection

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

(b) Decision - Within thirty (30) calendar days after a properly submitted appeal is received, the Director shall report the his decision of-the-Board in writing to the applicant. The Board 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 Board 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.

14.02. Appeal for Removal from Register

(a) Appeal Request - Any person whose name has been removed from a register allegedly for reasons specified in these Rules may appeal to the Board for reconsideration. Such 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. Such 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 the Rules and Regulations. Within thirty (30) calendar days after a properly submitted appeal is received, the Director shall report the decision in writing to the applicant.

Section 15. Classified-Exempt Service

15.01. 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 so developed and maintained 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.

15.02. 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.

15.03. 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.

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

service vacancy be filled from a certification prepared for a classified-exempt service vacancy.

15.05. 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 interested appointing authority shall be given like opportunity to be heard. The appeal of a classification action shall be submitted in writing within ten (10) calendar days of the effective date of the classification action and shall have the right to a review of the action under the procedure established in W.V. Code, §29-6A, as amended.

Section 16. Attendance and Leave

In compliance with ~~Chapter-21, Article-5C, Chapter-2, Article-2, and Chapter-29, Article-6, Section-10, of the Code of West-Virginia W.V. Code §21-5C-1 et seq., §2-2-1 et seq., and §29-6-10, as amended,~~ the following regulations shall apply to classified employees.

16.01. Official Holidays

(a) In accordance with Chapter-2, Article-2, of the West Virginia Code, as amended, Employees shall be released from work in observance of the following official holidays are: New Year's Day, first day of January; Martin Luther King's Birthday, third Monday of January; Lincoln's Birthday, twelfth day of February; Washington's Birthday, third Monday of February; Memorial Day, last Monday in May; West Virginia Day, twentieth day of June; Independence Day, fourth day of July; Labor Day, first Monday of September; Columbus Day, second Monday of October; Veterans' Day, eleventh day of November; Thanksgiving Day, fourth Thursday of November; Christmas Day, twenty-fifth day of December; any day on which an election (Primary or General) is held throughout the State, and, such other days as the President, Governor or other duly constituted authority shall proclaim to be legal holidays.

(b) When a holiday falls on a Sunday, the following Monday shall be observed as the official holiday. When a holiday falls on a Saturday, the previous Friday shall be observed. 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. It is recognized that some agencies When an agency must modify holiday schedules to accommodate around-the-clock shifts or other special needs--Each, 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. 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 shall be 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.

16.02. Agency Work Schedules - Each appointing authority shall establish the work schedule for the employees of his agency. The work schedule shall specify the number of hours of actual attendance on duty for full-time employees during a workweek, the day and time that the workweek begins and ends, and the time that each work shift begins and ends. Such work schedules and changes thereto must be submitted to the Director within fifteen (15) calendar days after employees commence work under the schedule.

16.03. Annual Leave

(a) Amount, Accrual - Except as otherwise noted in these rules, each employee shall be 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 worked beyond the normal work week which shall not exceed 40 hours.

Length of Service Category	Accrual Rate	Carry-forward Hours Days
Less than 5 years of regular employment	.05769-hour-per- hour-paid <u>1.25 days/month</u>	240-hours 30 days
5 years but less than 10 years of regular employment	.06923-hour-per- hour-paid <u>1.50 days/month</u>	240-hours 30 days
10 years but less than 15 years of regular employment	.08077-hour-per- hour-paid <u>1.75 days/month</u>	280-hours 35 days
15 years or more	.09231-hour-per- hour-paid <u>2.00 days/month</u>	320-hours 40 days

(b) Service to Qualify

1- Qualifying service for length of service category (Section 3.1) is based on State employment in-an-agency-covered by-Division-of-Personnel or employment in the classified service.

2---Credit-may-also-be-given-for-other-State-employment not-in-a-covered-Division-of-Personnel-agency-if-requested-in writing-by-the-appointing-authority-of-the-covered-agency-and-the

~~executive-or-administrative-head-who-is-the-lawfully-delegated
authority-in-the-non-Division-of-Personnel-agency-and-approved-by
the-Director-of-Personnel~~

(c) Requesting, Granting - Accrued annual leave shall be granted at such times as will not materially affect the agency's efficient operation. The employee shall request annual leave in advance of taking such leave except as noted elsewhere in this Section. Annual leave may not be granted in advance of the employee's accrual of such leave. Agencies are encouraged to grant annual leave when hazardous conditions make going to and from work difficult.

(d) Coverage

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

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

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

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

(f) Separation from Employment - An employee who separates from employment for any reason shall be paid for all accrued and unused annual leave. Annual leave does not accrue; ~~salary adjustments shall not be given, and payment shall not be made for holidays which occur after the effective date of separation or last day worked during the notice period.~~ Such payment shall be made according to one of the following methods:

1. An employee may elect to be paid in bi-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 separation terminal leave payment is due falls before the day on which the pay period ends, separation 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 of the West Virginia Code, as amended, who is separated from employment by resignation, layoff, dismissal, retirement, death, or termination, may be paid in lump sum, at their option, for accrued and unused annual leave. Separation Terminal leave payment for an employee who selects a lump sum payment shall be calculated using the daily rate of pay for the half-month(s) or portion of the month which the accrued and unused annual leave covers. Employees in positions allocated to job classes assigned to an hourly pay schedule or per diem pay schedule approved by the Board shall be paid according to those standard procedures. The lump sum payment shall be made by the time of what would have been the employee's next regular pay day had his employment continued. No deductions may be made for contributions toward retirement from the lump sum payment.

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

(g) Transfer of Annual Leave

1. When a covered classified employee transfers from one agency to another, all seniority-rights 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. At-the-discretion-of-the-appointing-authority, Annual leave accrued while in exempt or classified-exempt permanent employment as defined in Section-16-03(b)2 may shall be transferable transferred to covered-agency classified employment.

(h) When Sick Leave Exhausted - For-illness-of-an-employee, when-the-employee's-sick-leave-and-compensatory-time-are exhausted, or-for-illness-in-an-employee's-immediate-family-when the-sick-leave-allowance-of-40-hours-per-calendar-year-is exhausted, an-employee-who-requests-utilization-of-annual-leave under-this-Section-must-be-granted-any-or-all-accumulated-annual leave, provided-the-employee's-illness-or-the-reasons necessitating-the-presence-of-the-employee-with-his-or-her-family are-verified-by-a-physician's-statement-in-cases-in-which-the leave-extends-beyond-three-working-days. Annual leave shall be used in circumstances when sick leave or the sick leave allowance

for an employee's immediate family is exhausted. The immediate family shall be understood to include only the employee's father, mother, son, daughter, brother, sister, husband, wife, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandfather, grandmother, grandchildren, stepmother, stepfather, and stepchildren. The same rules regarding the necessity for a physician's statement when sick leave is used shall apply when annual leave is used under these circumstances.

16.04. 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 -06923-hour leave-per-hour-paid-not-to-exceed-the-normal-work-week 1.5 days per month for full-time employees. There shall be unlimited accumulation of sick leave.

(b) Coverage

1. Sick leave shall not be accorded temporary, 30-day emergency, 90-day exempt, 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. Such 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 on-the-basis-of -06923-hour-leave-per-hour-paid-(not-to-exceed-forty-(40)-hours paid-per-week) in proportion to hours employed to work annually.

(c) Minimum Charge - The minimum charge against sick leave may shall be one half (1/2) hour. Additional leave may shall be charged in multiples of one half (1/2) hour.

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

(e) Separation from Service - Sick leave does not accrue, salary-adjustments-shall-not-be-given,-and-payment-shall-not-be made-for-holidays-which-occur after the effective date of

separation or last-day-worked-during-the-notice-period.

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

2. All Other Separations - All accumulated sick leave shall be cancelled as of the effective date of separation of ~~employment-or-last-day-worked-during-the-notice-period~~. If the employee returns to work within twelve (12) calendar months all ~~lost 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 ~~lost cancelled~~ sick leave shall be restored. If an employee is recalled from a layoff all ~~lost cancelled~~ sick leave shall be restored.

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

1. Illness - Sick leave may be granted in the event of an illness of, or injury to, an employee which incapacitates him from performance of his duties. An employee who elects not to utilize sick leave under this section must apply for a medical leave of absence without pay under Section 16.08(bc).

2. Death in the immediate family of the employee - ~~This provision shall be understood to include~~ Sick leave shall be granted up to 3 days to an employee for the death of a member of his immediate family. ~~and the~~ The immediate family shall be understood to include only the father, mother, son, daughter, brother, sister, husband or wife, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandmother, grandfather, granddaughter, grandson, stepmother, stepfather, and stepchildren.

3. Exposure to Contagious Disease - 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 Medical Appointments-Employee - Routine dental and medical appointments for treatment or examination of the employee may be charged to sick leave. Reasonable travel time for such 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 of a member of an employee's immediate family or routine dental or medical appointments, including reasonable travel time, in for an employee's immediate family may be charged to accrued sick leave, not to exceed 40 hours per calendar year.

(g) Physician's Statement

12. Immediately upon return to work, an employee shall furnish a written statement from the attending physician for all consecutive days of sick leave granted beyond three working days. The physician's statement shall specify the period of incapacity and state that the employee was unable to perform his job.

3. In the absence of the a physician's statement, annual-leave-shall-be-charged-for the entire period 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 physician's statement confirming the necessity for continued leave must be submitted every thirty (30) calendar days. The necessity for absence because of exposure to contagious disease must be verified regardless of the length of absence.

21. The Director shall prescribe a physician's statement form to be supplied by all agencies to its employees. Use of this form is discretionary-with-the-agency required by all agencies.

5. The appointing authority may permit an employee to return to work from sick leave at less than full duty, but the terms of return shall be written and are subject to review by the Director. Such review may include the requirement of additional information from a physician regarding the employee's ability to perform the essential duties of his job.

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

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

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

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

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

(c) Approval of a return to work at less than full duty shall be granted for no longer than 30 days. Requests

to continue at less than full duty for more than 30 days shall fall under the same regulations as an original request.

(h) Transfer of Sick Leave

1. When a ~~covered~~ 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 ~~as-defined-in Section-16-03(b)2-of-this-rule~~ may be transferable to covered agency employment.

(i) Illness While on Annual Leave - An employee who becomes ill and who is admitted to a hospital or has medical services performed in an emergency room while on previously approved annual leave may request that all or part of the time spent in a hospital or emergency room be charged to sick leave. The employee must request such action immediately upon return to work and must provide a physician's statement or hospital statement listing the specific dates of hospitalization or emergency room services. Sick leave will be charged only for the period of time the employee is hospitalized or in the emergency room. The remainder of the time must be charged to annual leave.

16.05. 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 illness of less than three days. Prior written notice of the requirement for appropriate substantiation must be given to the employee.

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

16.07. Overtime Work and Holiday Work - An appointing authority or his designated representative may require an employee to work in excess of the prescribed working hours or on holidays when such work is deemed 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.

16.08. Leave of Absence Without Pay

(a) Personal Leave - Upon application in writing to and written approval of the appointing authority, a permanent, probationary, or provisional employee may be granted a leave of absence without pay for a specific period of time which normally should not exceed one year. A leave of absence without pay may exceed the normal one year limitation and may be granted at the discretion of the appointing authority based on the department's personnel needs. Time spent by probationary provisional employees for leaves of absence shall not be construed to 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. except-an

(b) Family Leave - Upon exhaustion of all annual leave any employee hired for permanent employment who has worked for at least twelve consecutive weeks shall be entitled to a total of twelve weeks of unpaid family leave during any twelve month period because of the birth of a son or daughter of the employee, or the placement of a son or daughter with the employee for adoption; or to care for the employee's son, daughter, spouse, parent or dependent who has a serious health condition.

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

If a leave because of birth or adoption is foreseeable, the employee shall provide the employer with a two-week written notice of such expected birth or adoption. 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 unduly the operations of the employer, subject to the approval of the health care provider of the employee's son, daughter, parent or dependent and shall provide the employer with a two-week written notice of the treatment or supervision.

The employer may require the employee to provide certification by a health care provider that the child, dependent, parent or employee 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.

(bc) 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 (1) no later than fifteen (15) calendar days following the expiration of all sick leave and compensatory time 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 or (3) within fifteen (15) calendar days after the employee is injured or ill; and

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

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

d. The disability as verified by a physician is not of such nature as to render the employee permanently unable to perform his duties.

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

(ed) End of Leave - At the expiration of leave of absence without pay, the employee shall be reinstated to his or her former position, or one of comparable pay and duties, without loss of rights, unless the position is no longer available due to a reduction-in-force caused-by-curtailment-of-funds. If the absence was for an approved unpaid family leave of absence, the employee shall be returned to the position held prior to the

leave provided such leave did not exceed twelve weeks. If the leave of absence without pay was granted by due to illness, the employee must furnish from the attending physician a certificate 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 shall be every-thirty-(30) calendar-days---Such-review-may-include-the-requirement-of additional-certification-by-a-physician subject to the same conditions specified in section 16.04 (g)(5). 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, shall be cause for dismissal.

(de) Reporting Procedures - The appointing authority must report a leave of absence without pay to the Director of Personnel. The appropriate forms must include the 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.

16.09. Injury on the Job - In the event an employee is injured in the course of and resulting from covered employment, such 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. Upon receipt of such temporary total disability benefits the employee shall pay or assign to his or her employer the temporary total disability benefits received or an amount equal to the temporary total disability benefits received. Employees shall be restored sick leave time benefits and, if used, annual leave benefits on a day for day basis which corresponds to the temporary total disability benefits paid to the employer. If the employee fails to pay or assign to the employer the temporary total disability benefits received or an amount equal to the temporary total disability benefits received, then the employer shall deduct from the employee's subsequent wage payments an amount equal to the temporary total disability benefits received. Upon payment of this amount the employer shall restore sick leave time which corresponds to the amount of temporary total disability received by the employee.

It shall be a discriminatory practice for an employer to fail to reinstate an employee who has sustained a compensable injury to that employee's former position of employment, upon demand for such 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 shall mean a position which is comparable in wages, working conditions, and, to the extent reasonably practicable, duties to the position held at the time of injury. A written statement from a medical professional that the medical professional approves the injured employee's return to regular employment shall be prima facie evidence that the worker is able to perform such essential duties. In the event that neither the former position nor a comparable position is available, the employee shall have 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 shall be 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.

16.10. Military Leave

(a) All employees hired for permanent employment who are members of the National Guard or of any of the Reserve Components of the Armed Forces of the Federal Government shall be entitled to leave of absence from duty without loss of pay, status, or efficiency rating, on all days during which they shall be engaged in drills or parades during business hours ordered by proper authority, or for field training or active service for a maximum period of thirty calendar working days in any one calendar year ordered or authorized by proper authority. The term "without loss of pay" shall mean that the employee shall continue to receive his normal salary or compensation, notwithstanding the fact that such employee may have received other compensation during the same period. An employee need not exhaust all annual leave, or sick leave, or compensatory time. Furthermore, such leave of absence shall be considered as time worked for the agency in computing seniority, eligibility for increase and experience with the agency. The terms of this paragraph shall not apply under the provisions of any Selective Training and Service act, or other such act whereby the President may order into active duty the National Guard and the Reserve Components of the Armed Forces of the Federal Government. An employee shall be required to submit an official order from the appropriate military officer in support of the request for the above-referenced military leave above-referred-to.

(b) Effective August 2, 1990, all officers and employees of the State who are ordered or called to active duty by the President of the United States are eligible for an additional leave of absence from employment without loss of pay, status, or efficiency rating for a maximum period of thirty working days. The term "without loss of pay" means that the employee shall

continue to receive his normal salary or compensation, notwithstanding the fact that such employee may have received other compensation from federal or state sources during the same period.

(c) Other than as provided in (b) above, Any employee hired for permanent employment entering the U.S. armed services in time of war, national emergency or under compulsory provisions of law of the U.S. in time of peace must be granted a leave of absence from his service with the agency. Upon completion of and discharge from any such armed services and within the applicable time period described prescribed by federal statute, rule, or regulation regarding return to employment, the employee shall have the right to reassume resume his service with the agency without any prejudice whatsoever to his status, merit rating or standing by reason of such absence, in accordance with Section 13.07(b) of the Division of Personnel Rules and Administrative Regulations. Employees shall be credited with all annual leave, and sick leave,--and-compensatory-time not used at the commencement of his military leave in accordance with Section 13.07(c) of the Civil-Service-Rules-and Division of Personnel Administrative Regulations. This paragraph shall not be construed:

(e1) 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 heretofore previously existed.

(d2) As providing that the salary paid by the agency shall continue to be paid to the employee while he is not performing the duties of his position with the state because of such services with the armed forces of the United States.

(e3) To the extent that any portion of this section is inconsistent with or conflicts with the requirements provisions of any applicable federal or state statute, rule, or regulation regarding military leave or re-employment rights, the such provisions of the applicable federal statute, rule, or regulation shall govern only to the extent that this section is inconsistent or in conflict with such federal statute, rule, or regulation those provisions.

16.11. Court, Jury, and Hearing Leave

(a) Upon application in writing, an employee hired for permanent employment shall be granted leave with pay when, in obedience to a subpoena or direction by proper authority, he serves upon a jury or appears as a witness before any court or judge, any legislative committee, or any officer, board, or body authorized by law to conduct any hearing or inquiry. This section shall not apply in cases where the employee is a

litigant, defendant or other principal party or has a personal or familial interest in the case or proceeding. This paragraph 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 a grievance 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 absence as is required by the appointing authority. ~~The employee shall be entitled to a leave of absence with pay for the period of absence required to perform such duty. -- Annual leave will not be charged during the time the employee is on court, jury, or hearing leave.~~

16.12. Education Leave

(a) Subsidized by Agency - An agency authorized by law to subsidize subsidizing advanced educational training for state 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. Such leave shall be considered as continuous employment, except that employees while on educational leave shall not accrue sick leave, or annual leave, or compensatory time, nor shall such employees be eligible for salary advancements.

(b) Non-subsidized by Agency - A personal ~~Leave~~ of absence may be granted for educational purposes. See Section 16.08(a).

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

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

16.15. Leave Records - Each agency shall maintain a current leave record of its employees' accrued and used leave. Each employee shall have access to his or her leave records subject to

the appropriate agency's established rules and regulations. Supervisors and employees shall attest to the accuracy of such records on a periodic basis, but not less than twice annually.

Section 17. Service-Ratings 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 service-ratings performance evaluation designed to give provide a fair valid evaluation of the quality and quantity of work performed. Insofar as practicable the system of service-ratings performance evaluation in the classified service shall be uniform standardized. Such ratings evaluations shall be prepared and recorded for all permanent ~~and-provisional~~ employees at regular intervals not to exceed twelve months. Service-ratings Performance evaluations shall be considered in determining salary advancements and in making promotions, demotions, and dismissals. An employee shall be notified of his service-rating performance evaluation in writing by the appointing authority of the appropriate agency.

Section 18. Political Activities

18.01. Prohibition of Political Activities

(a) No person shall be appointed or promoted to or demoted or dismissed from any position in the classified service or in any way favored or discriminated against with respect to such employment because of his political or religious opinions or affiliations or race; but nothing herein 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 such 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 such assessment, subscription, contribution or service of any employee in the classified service.

(e) Notwithstanding any other provision of this code, no employee in the classified service shall:

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

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

3. Be a candidate for any national or state paid public office or court of record; or hold any paid public office; or be a candidate or delegate to any state or national political party convention, a member of any national, state or local committee for a political party, or a financial agent or treasurer within the meaning of the provisions of section-three, four-or-five-e, article-eight, chapter-three-of-the-Code-of-West Virginia W.V. Code §3-8-3, §3-3-4 or §3-8-5(e), as amended 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 service; or post or distribute campaign literature in a classified employees' worksite; or wear apparel bearing political logos or endorsements during work hours when observed by or in contact with the public. 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, shall be permitted.

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

(fg) 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 such candidacy, commencing upon the filing of the certificate of candidacy. If elected, such 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.

18.02. Application of the Hatch Act - Employees whose principal employment involves an activity which is financed wholly or in part by loans or grants made by the United States or a Federal agency are subject to applicable provisions of the

Federal Hatch Act. These provisions shall be made known to classified employees by the appointing authority concerned and compliance adhered to.

18.03. Additional Prohibition for Highways Employees - No person may be appointed or employed in any capacity by the department who is a candidate or holds any public office or is a member of any political party committee. Employees of the Department 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 Department of Highways who becomes a candidate for or holds any public office or becomes a member of any political party committee shall vacate resign or be dismissed from his position with the department immediately on the date of the filing of candidacy or the date of assuming the public office or the political party committee membership.

18.04. Additional Prohibition for Rehabilitation Services Employees - No employee engaged in the administration of the Vocational Rehabilitation program shall take an active part in the management of political campaigns or participate in any political activity, except that he shall retain the right to vote as he may please and to express his opinions as a citizen on all subjects. No such officer or employee shall solicit or receive, nor shall any such officer or employee be obliged to contribute or render, any service, assistance, subscription, assessment, or contribution for any political purpose.

Section 19.01 Other Employment

No employee shall hold other public office or have conflicting employment while in the classified service. Determination of such conflict shall be made by the appointing authority and Board and shall consider whether the other employment:

(1) will be in conflict with the interests of State government;

(2) will interfere with the performance of the employee's official duties;

(3) will use or appear to use information obtained in connection with official duties which is not generally available to the public; or,

(4) may reasonably be regarded as official action.

Section 19.02 Nepotism

No appointing authority shall influence or attempt to influence the employment or working conditions of his immediate

family. It shall be the responsibility of the appointing authority to administer the employment of relatives of any agency employee in a consistent and impartial manner.

No employee shall directly supervise a member of his immediate family. More specifically, no employee shall review or audit the work of a member of his immediate family, take part in discussions concerning employment, assignment, compensation, discipline or related matters involving a member of his immediate family. In the event that an individual, through marriage, adoption, etc. is placed in a prohibited business relationship with a member of their 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 accomodation which protects the interests of the public.

Section 20. Payroll Certification

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

~~(b)-If-an-appointing-authority-fails-to-comply-with-an-order of-the-Commission-after-a-hearing,-he-shall-be-personally-liaible to-the-appealing-employee-for-any-salary-due-from-the-time-of-the final-order-of-reinstatement-by-the-Board-~~

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

Section 21. Records and Reports

The Agency shall establish and maintain a service record for each employee, showing name, title, organizational unit, salary, changes in status, service-ratings performance evaluations, and

such other personnel information as may be considered pertinent. All personnel records shall be open to the inspection of the Board but shall be otherwise be held confidential by the Agency in accordance with applicable State law.

Section 22. Duties of State Officers; Legal Proceedings to Secure Compliance; Penalties

22.01. Duties of State Officers - Pursuant to ~~Chapter-29, Article-6, Section-12-of-the-Code~~ W.V. Code §29-6-12, all state agencies' officers and employees shall comply with and aid in all proper ways in carrying out the provisions of ~~Article-6~~ W.V. Code §29-6-1 et seq., as amended, the rules, regulations, and orders thereunder. All officers and employees shall furnish any records or information which the Director or the Board may request for any purpose of ~~Article-6~~ W.V. Code §29-6-1 et seq., as amended. All officers and employees shall comply with all rules, regulations, policies and orders of the Director or the Board and shall not increase nor diminish any benefits afforded any classified employee by such rules, regulations, or orders.

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

22.03. Penalties ~~-- The State Personnel Board adopts as its policy by reference thereto the provisions of Chapter-29, Article 6, Section-22(b) and will enforce the policy accordingly.~~

(a) Any person who shall willfully violate any provision of W.V. Code, §29-6 et. seq. or of this rule shall be 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 this article shall, for a period of five years, be ineligible for appointment to or employment in a position in the classified or classified-exempt service, and if he is an officer or employee of the state, shall forfeit his present office or position.

Section 23. Grievance Procedure - An employee hired for permanent employment may file a grievance with the Education and State Employees Grievance Board as provided for in ~~Chapter-29-6A of-the-Code-of-West-Virginia, as-amended~~ W.V. Code, §29-6A, as amended.

Section 24. Training and Development

24.01. 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, handicap 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 training organization and human resource development needs assessment, locating-training-materials-and-resources determination of appropriate development strategies, course development design, training techniques, training evaluation and coordination of training between among the agencies.

(ac) Required-Courses-- The Director shall provide training courses on specific aspects of personnel administration under Division of Personnel law and these rules and regulations, and shall designate employees by classification, or by duties, who must attend each type of course.

(bd) General-Courses-- The Director shall make available to the agencies training in-knowledge,-skills-and-abilities-which are-applicable-broadly-in and development opportunities that are broadly applicable to many classifications in all agencies. Employee selection for the courses training and development opportunities shall be consistent with established agency and Division of Personnel nomination procedures.

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

Subject to the approval of the Director of Personnel, each participating agency shall determine the location and positions in which apprenticeships shall be established. The Chief Administrative Officer of each agency shall establish procedures

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

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

Section 25. Employee Representative Organization Bulletin Boards

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

Section 256. Amendments

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

101 Heavener Court
Stonewood, WV 26301
Sept. 9, 1992

Adm. Law Division
Secretary of State
Building 1 Suite 157 K
1900 Kanawha Blvd. E
Charleston, WV 25305-0770

Dear Ms. Cooper;

I am writing in response to the write up in the News & Views Bureau of Employment Programs, Vol. 49, no. 8, September 1992. The article is on page 5, the title is DOP Nixes Intermittent-Temporary Combo.

I was hired by the Clarksburg Unemployment Office on 12/04/91, as a temporary employee for 160 days. Then on 06/01/92, I was hired as an intermittent interviewer.

I was told at the time by Janice Palmiere, my supervisor that I had a maximum of 945 hours to work within the next year. But since the case load was extremity high, I could work as needed, and when needed, she could roll me over to a temporary employee to keep me working.

I was told that since her supervisors would not fill the current vacancies that are available with full time employees at this time, this would be the way to do it. I do not know the rules and regulations, so this is the way it will be done.

After reading this articles, I am mad and upset. Since June 1, 1992 I have worked over 425 hours including overtime, because of the current unemployment laws. I have a balance as of 09/02/92 of 500.75 to work between now and June 1, 1993.

THIS IS NOT FAIR, that my employer has spent months on training me properly, because of the situation I have worked as needed, whenever needed. And now I am penalized because of it.

IT IS NOT FAIR, to the state of West Virginia to keep training new employees; this would be expensive because you would have to hire someone every week and train them for months before they could do their job properly.

IT IS NOT FAIR, to the claimants to keep training new personell. With the laws as they are, it is so confusing to someone with a little experience, it would be mind boggling to a new employee. The claimants will not be getting the service they need, and deserve; if you are required to hire new employees without the proper training for the job, rather than to extent part-time employees.

Although, I have been here almost a year, I still have a lot of learning to do. But I feel that I can do the job and fulfill the needs of this office and the claimants better than a new employee who would be here a few months and gone.

IS NOT FAIR to the permanent employees, because they can not perform their duties if they are training new employees everyday.

If it is not fair to the claimants, the employer, the state, and other employees, what good is it?

I personally do not like it. But my motive is personal. I have told my employer that I want to work full time, but she can't hire me, because she is not allowed to fill these positions at this time. I have gone as far to say I do not want the benefits, I just want a job.

It seems to me that it would be better to keep intermittent employees on the payroll and roll them to a temporary employee, then to have them work their hours and then lay them off.

I have the experience, knowledge, and the capabilities to do the job correctly. But because of the situation I would have to open an unemployment claim if I was laid off. It just does not make sense.

Thank you for your time, but I feel this needs much more thought. I am looking forward to your response.

Thank you,,

Betty Harvey
Betty Harvey



Gaston Caperton
Governor

Michael T. Smith
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

September 18, 1992

Ms. Betty Harvey
101 Heavener Court
Stonewood, West Virginia 26301

Dear Ms. Harvey:

Your letter dated September 9, 1992 to the Secretary of State's Office has been referred to this office for response, inasmuch as the subject matter comes under the jurisdiction of the Division of Personnel and the State Personnel Board.

Your letter was very timely in that it was received within the 30-day comment period on the subject of prohibiting the present procedure of employing individuals for concurring intermittent-temporary appointments.

Once all comments received during the comment period are evaluated, I will communicate further with you on this matter.

Sincerely,

Michael T. Smith, Director
WV Division of Personnel

MTS:ss

cc: ~~Secretary of State's Office~~

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SEP 22 9 16 AM '92

FILED

101 Heavener Court
Stonewood, WV 26301
Sept. 9, 1992

Adm. Law Division
Secretary of State
Building 1 Suite 157 K
1900 Kanawha Blvd. E
Charleston, WV 25305-0770

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Thank you for your time, but I feel this needs much more thought. I am looking forward to your response.

Thank you,,

Betty Harvey
Betty Harvey

PUBLIC HEARING
August 20, 1992
Building 6, Room 430-C
State Capitol Complex
Charleston, West Virginia
2:00 p.m.

SUBJECT: Revision to the Administrative Rules and Regulations of the Division of Personnel

MR. CANFIELD: We have three meetings today. First, is the Public Hearing on the Rules and Regulations. We will open the Public Hearing on the Rules and Regulations relating to W.V. Code §29-6-10, which are in the comment period, now. Are there any written comments to be received at this time? We did have one to come in a few minutes ago. I think Tari had it. Make sure that is reflected in the minutes because she has it. She was handed it by somebody from EPA

MR. SMITH: It's from Dave Callaghan, Division of Environment Protection.

MR. CANFIELD: Right. She said it was from Energy. Okay.

MR. SMITH: Let the record show we have also received some suggested word changes from Sally Richardson at PEIA.

MR. CANFIELD: Let the record show then we've received written comments today from Mr. Callaghan of Division of Environmental Protection and Ms. Richardson of the Public Employees Insurance Agency. Is there anyone wishing to comment at this time on any of the rules and regulations? Mr. Kennedy did you wish to comment?

MR. KENNEDY: I don't have any comments.

MR. CANFIELD: All right. Anybody else have any comments at this time? If there's no testimony to be given at this time or comments, additional written or verbal, we will conclude the hearing and go on to the next step, which will be to forward, after the review of the suggestions that have come in, to forward those to the Legislative Rule Making Authority. The Public Hearing will stand adjourned and the State Personnel Board will go into regular session.

Please note: David Kennedy, Public Service Commission, was the only person representing an agency at the public hearing.



State of West Virginia
Department of Tax and Revenue

GASTON CAPERTON
GOVERNOR

TAX DIVISION
P. O. Box 2389
Charleston, WV 25328-2389

JAMES H. PAIGE III
SECRETARY

M E M O R A N D U M

DATE: August 28, 1992

TO: Tari McClintock Crouse
Assistant Director of Employee
Communications
Division of Personnel

FROM: Alan L. Mierke *[Signature]*
Assistant Secretary
Assistant Tax Commissioner

RE: PERSONNEL DIVISION RULES AND REGULATIONS

=====

Listed below are a series of questions and comments from the Tax Division in response to the proposed changes in the Division of Personnel's Administrative Rules and Regulations.

Section 3, Definitions: The definition of job abandonment refers the reader to the definition of "resignation" without really explaining what job abandonment is. Job abandonment usually refers to the instance where an employee fails to report to work without contacting his or her employer for a designated period of time or does not report to work after a leave request has been denied.

Reference policymaking positions (page 8): In the past, policy making positions were held to be Assistant Commissioner level and above. Does Director in this definition mean the level of management in the Tax Division as Tax Division Directors? Does this inclusion of "Director" within the definition of Administrator now make these positions policy making positions? Also, what does "or other administrative title" include? Definition of position needs to be more clear.

Work Week page (11): Definition of work week refers to applicable federal and state labors laws without being specific. What applicable laws are they referring to?

Effective Date of Separation (page 5): Does this mean last day on payroll?

Section 8, Registers: 8.02 (b) . . . shall cease immediately upon appointment to a classified position. Should add: "or failure to accept a classified position."
8.02 (c) . . . exclusion of exempt positions. Should add: "Registers should be purged on a regular basis of applicants names that have accepted or refused appointments."

All Sections Regarding Pay and Salary: The term "step" has been replaced with "increment". This may be confusing due to the incremental pay that employees receive annually.

Section 10.05 Temporary Appointments: By changing the amount of time worked from six months to 945 hours, the ability to work temporary employees overtime during our peak tax processing season is limited. The 945 hour limitation for temporary help hired from the register would not allow the Department to work employees overtime. 945 hours is approximately 5.5 months at 8 hours per day. Any overtime work would shorten this period further.

Section 11.065: Dismissal during Probation - (a) Page 40 - Why is 12-month probationary period treated different than 6-month probationary period?

16.03 Annual Leave: The method for accrual of annual leave and the amount that can be carried over at the end of the year revert back to days rather than hourly rates for seniority. Although it should work out to be the same, we will once again have to revise our method of computing leave earned. (The same method changed back for sick leave also.)

Section 19.02 Nepotism (page 66): This section should contain a "grandfather" provision to protect employees hired prior to the addition of this section to the rules and regulations. As an example, an employee hired by a manager from a register, with a ranking in the top 10 is placed under the supervision of a relative. The Data Entry Unit, in the Revenue Division, is in this position. At the time the employee was hired, every effort was made to determine if there were any rules prohibiting the hiring of relatives. This subject was mentioned at the "Ethics in Government Teleconference". There is not a problem with this situation as long as current employees are not affected.

If you have any questions, please contact me.

ALM/jpc.



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Gaston Caperton
Governor

MEMORANDUM

TO: Tari Crouse, Assistant Director
Employee Communication

FROM: Michael F. McCabe, Director
Office of Personnel Services

DATE: August 18, 1992

RE: Rules and Regulations

Attached for your information are comments about the proposed Division of Personnel Rules and Regulations received to date. As additional comments are received they will be forwarded to you.

If you have any questions, please let me know.

MFH/smb
8-18A.92

Attachments



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Bureau of Human Resources, Office of Social Services
Building Six, Capital Complex
Charleston, West Virginia 25305
(304) 558-7980

Gaston Caperton
Governor

RECEIVED

Training

MEMORANDUM

DATE: August 17, 1992
TO: Michael F. McCabe, Director, Personnel Services
FROM: Harry A. Burgess, Director, Social Services
SUBJECT: Proposed Division of Personnel Administrative Regulations

=====

The purpose of this memo is to respond to your request for comments on this material. Our comments are as follows:

Effective Date

In Section 3 it is not clear how an action is to be dated and how an employee will be notified that an action is being taken. Timeliness is a factor in meeting deadlines for appeals and grievances. We suggest that the regulations clarify that employees will be notified in writing a specified number of days prior to the effective date of an action and that the effective date be stated in the notification.

Notice of Examinations

In the orientation to reclassification the stated goals included developing a career ladder that goes across agencies within state government. Section 7.02 eliminates the mandate to circulate widely the availability of examinations. Restrictions to the places where additional eligibles are needed does not facilitate recruitment consistent with the goals stated by Personnel. We suggest that the mandate be reduced from the current wide listings but require circulation in all state agencies and college placement centers at a minimum.

Use of Annual Leave in Lieu of Family Sick Leave

It is not clear in Section 16.03 (h) what protection employees have in using annual leave once family sick leave is exhausted. This is critical when defining abuse of leave. We suggest that the regulations state that the status of supervisory approval is the same in this case as it is for use of family sick leave.

Page Two
August 17, 1992
Michael McCabe

Thank you for the opportunity to comment on these proposed regulations. Let me know if you have any questions or need further information.

HAB:pg

**STATE OF WEST VIRGINIA
INFORMATION MEMO**

TO: Mike McCall DATE: 8-7-92
 FROM: Gene King TIME: _____
 OF: _____ RECD. BY: _____

TELEPHONE NUMBER EXT.

- | | |
|--|--|
| ☐ PLEASE CALL | ☐ RETURNING YOUR CALL |
| ☐ WILL CALL AGAIN | ☐ CALLED TO SEE YOU |

THE ATTACHED PAPERS ARE REFERRED

PLEASE:

- | | |
|--|---|
| ☐ SIGN | ☐ PREPARE REPLY FOR MY SIGNATURE |
| ☐ COMMENT | ☐ REPLY DIRECTLY WITH COPY TO ME |
| ☐ NOTE | ☐ TAKE APPROPRIATE ACTION |
| ☒ AS REQUESTED | ☐ RETURN |
| ☐ FOR YOUR INFORMATION | ☐ ROUTE TO: _____ |
| ☐ APPROVE | ☐ FILE |
| ☐ SEE ME | |

REMARKS/MESSAGE: _____

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ST-121
resignation cannot be obtained, the appointing authority shall notify the Director of Personnel in writing of the separation of the employee and the circumstances.

13.02. Dismissals - The appointing authority, fifteen (15) calendar days after notice in writing to a permanent employee stating specific reasons therefor, may dismiss any employee for cause. The employee 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 deputy. The reasons for dismissal and the reply, if any, shall be filed with the Director of Personnel. Fifteen days notice shall not be required for employees in certain classes cases when the public interests are best served by withholding such notice, and shall be at the discretion of the appointing authority for employees in any class case when the cause of dismissal is gross misconduct.

13.03. Suspension - The appointing authority, eight (8) calendar days after may, upon oral notice confirmed in writing or by written notice, may suspend any employee without pay for cause or to conduct an investigation regarding an employee's conduct which has a job related adverse impact. 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 deputy. The eight (8) calendar day notice shall not be required for employees in certain cases when the public interests are best served by withholding such notice. The appointing authority shall file the statement of reasons for suspension and the reply, if any, with the Director of Personnel.

13.04. Layoff

(a) When it becomes necessary by reason of shortage of work or funds, or to permit reinstatement of employees on the release 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. (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.

There is no (b) or (c).

3. a list of the employees in each class affected by the layoff in order of retention.

(bd) It shall be 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.

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

(db) 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.

(ef) Order of Separation. After the number of positions to be abolished has been determined and the organizational unit has been approved, the order of separation shall be applied in the following manner:

1. non-status employees in the same class or classes identified for layoff in the following order: emergency, ninety day exempt, 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 shall not be counted, but educational and military leave shall be counted.

(fg) 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 State-Personnel-Board Director shall develop the occupational groups in the classified service based on similarity of work and required knowledges, skills and abilities.

(gh) Recall. Recall shall be to the agency as a whole and in reverse order of the layoff to the class from which the employee was laid off or any lower class in the class series or to any class previously held in the occupational group. An employee shall remain on the recall list for the length of his or her tenure on the date of the layoff or for a period of two

(h) Transfer of Sick Leave

1. When a covered 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 as-defined-in Section-16-03(b)2-of-this-rule may be transferable to covered agency employment.

(1) 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.

16.05. 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 illness of less than three days. Notice of the requirement for appropriate substantiation must be given to the employee in writing prior to a request for the same.

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

16.07. Overtime Work and Holiday Work - An appointing authority or his designated representative may require an employee to work in excess of the prescribed working hours or on holidays when such work is deemed necessary to the public

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

Section 19.01 Other Employment.

No employee shall hold other public office or have conflicting employment while in the classified service. Determination of such conflict shall be made by the appointing authority and Board and shall consider whether the other employment:

(1) will be in conflict with the interests of State government;

(2) will interfere with the performance of the employee's official duties;

(3) will use or appear to use information obtained in connection with official duties which is not generally available to the public; or,

(4) may reasonably be regarded as official action.

Section 19.02 Nepotism

No appointing authority shall influence or attempt to influence the employment or working conditions of his/her immediate family. It shall be 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 their immediate family. More specifically, no employee shall review or audit the work of a member of their immediate family, take part in discussions concerning employment, assignment, compensation, discipline or related matters involving a member of their immediate family. In the event that an individual, through marriage, adoption, etc. is placed in a prohibited business relationship with a member of their immediate family, the situation must be resolved within thirty calendar days. Resolution may be made by transfer, reassignment, resignation, dismissal, etc. of one of the involved employees.



Kanawha-Charleston Health Department

108 Lee Street E.
P.O. Box 927
Charleston, WV 25323



Donald M. Rosenberg, M.D.
Medical Director

MEMORANDUM

TO: Michael F. McCabe, Director
Office of Personnel Services

FROM: Thomas L. Gooding, Deputy Director
Kanawha-Charleston Health Department

DATE: August 11, 1992

SUBJECT: Proposed Division of Personnel Administrative Regulations

General Comment:

The Division of Personnel Administrative Regulations while applicable to agencies, departments, divisions and units of State and local government as written appear to be applicable to agencies of State government and State employees only. For example, page 2, section 3, Definitions- Agency is defined as "any administrative department of State government. Is a local health department which is an administrative department of county or in the case of combined departments, county/municipal government not an Agency covered by these regulations? On page 5, the definition of Grievance is "Any claim by one or more affected State employees.... Employees of local health department are not State employees in that they are not employees of and do not receive a pay check from a State agency. Other places in the regulations where State agency or State employee is used at the apparent exclusion of local government agencies and their employees include but may not be limited to: pg 17 - para 6.01; pg 44 - para 13.04 (F)2 and page 45(1); pg 46 - para 13.07(b) & (c); pg 51 - para 16.03(b); pg 57 - para 16.04(h)2; pg 61 - para 16.10(b); pg 67 - para 16.12; pg 67 - para 22.01; pg 68 - para 22.03(b).

Recommendations:

Expand the definition of "Agency" to read: Any administrative department of state or local government established by law or executive order. Change "State employee" to "classified employee" or "employee in the classified service" throughout the document.

Specific Comments:

Page 18, paragraph 6.04(f) 1.a. stipulates that if an agency's budgetary restrictions do not allow increases in pay to implement a new pay plan "the Board shall require a plan of application which assures as nearly as possible that the pay of all incumbents in the classified service shall receive equal treatment." This paragraph needs to be rewritten for clarity preferably with an example of how such equal treatment might be achieved in an agency.

ADMINISTRATION
348-6861

CLINIC SERVICES
348-6862

HOME HEALTH SERVICES
348-6112

ENVIRONMENTAL SERVICES
348-6863



Mid-Ohio Valley Health Department

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Dr. Thomas Lilly
Chairperson

Judith L. Shannon
Vice-Chairperson

Anthony Minard
Treasurer

Curtis W. Dickson
Executive Director

August 11, 1992

Mike McCabe, Director
Office of Personnel Services
Capitol Complex, Bldg 3 Room 560
Charleston, WV 25305

Dear Mr. McCabe:

The following are comments of this agency concerning the "Proposed Division of Personnel Administrative Regulations". For easy reference, I will cite our comments by page number of the proposed regulation.

On page 2, the definition of "agency" relates to one of state government and be broadened to include local agencies or regional agencies under the classified system, to avoid the two-tiered system.

On page 5, the definition of "grievance" should read "affected state classification system employees" instead of "state employees", again to include us at the local and regional level. This is important since an administrative law judge has recently ruled that under current regulation we may not have access to the state grievance procedure.

On page 17, under "entry salary" there is a reference "For each step above the minimum..." that needs to be changed or explained since "steps" are no longer included in the system.

On page 18 under "Additional Pay" we need classification as to whether a local health department's "on-call pay" must be approved by the State Board as a pay differential. We believe this interferes with the authority of local boards of health.

On page 19, under item 3 of "Lower Minimum", we are concerned about freezing the salary of long-time employees who are reclassified into salary ranges where they are above the maximum rate of the new range. This is unfair. There needs to be some opportunity for management to recognize their outstanding service with appropriate salary adjustments.

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*as defined
in pay plan
implementation*

On page 20, under "Minimum Increase" there is language related to pay rate adjusted by one increment in the range. This needs to be explained since there is no definition in the earlier section of what an increment is.

On page 21, under "Longevity Increases" there is a need to change the wording relating to "state service" to read "of total service in the state classification system". This will enable local agencies to participate.

On page 23, under "Character of Examination" item b, we strongly protest the requirements that in order to be eligible for exams or registers that applicants must have been born in WV, lived for one year in WV prior to date of exam, or maintained a legal residence for 10 years, with the Director waiving this at his discretion. While we agree that some priority should be given to WV residents, this is an archaic and hurtful element of the system. Our agency hires several individuals who reside across the river in Ohio. This provision makes it extremely difficult for professionals outside our state to be included. We are a very highly mobile society in this modern era. We would like this provision modified or deleted.

On page 28, under "preference registers" we would like to see these registers limited to geographical area. Likewise on page 29, under preference registers. The preference registers listing former ABC employees with minimal generic skills for positions for a local health agency with more stringent needs has been an overwhelming problem for us. Since any "classified employee" (not just "state" employees) are now included, we would live with the one year for other agencies (two years for the employee's former agency) and a geographical area eligibility requirement.

On page 32, under "Local Office Certification" the same issue arises and needs to be clarified. The language allows us to request geographical area designation, but does not speak to preference registers and if they will also be limited by geographical area.

On page 34, at the very top of the page (third line) it speaks to additional county or municipal agencies added to the classified service. There needs to be recognition of regional entities such as ours, and also the fact that health departments at the county level are not sub-units of county government.

On page 36, we are pleased to see that we may still have intermittent appointment opportunities.

On page 38, under "Probationary Period" providing for probation up to one year with the Board fixing the length for each class, we would like to see some authorization for an

appointing authority to be allowed to extend the probationary appointment from the usual six months to include up to another six months of "extended probation" when the agency desires to try to salvage a borderline performing employee and to give them additional time to improve their performance before termination. Otherwise we have to make a six-month judgment that will either stick us with a poor employee or lose us a potentially workable employee.

On page 44, under "Recall" there needs to be some clarification as to what "agency as a whole" means as it relates to local health departments. We would contend we are independent entities and do not fall under the state health agency in this context.

On page 45, under "preference hiring" the reference to "state agencies" needs to read "agencies in the state classification system" in order to include local health departments.

On page 50, under "Agency Work Schedules" the language requiring us to submit to the Director employee work schedules and changes thereto we believe is an infringement upon our responsibilities as agency administrators, and it is ridiculous to require all state classified positions work schedules to be submitted to the Director.

Also on page 51, under "Service to Qualify" language on "state employment" needs to be changed to "employment in the state classification system".

On page 53, in item 3, the language needs to be modified to reflect the "consolidated" state retirement system (not the "state" system) and recognition that some local agencies are not participating members of the PEIA. The same is true for both items at the bottom of page 54 and top of page 55. TRS

On page 55, under granting accrued sick leave for death in the immediate family, we recommend establishing three days emergency leave for such instances instead of requiring this to be accrued sick leave. Also on page 55, under item 6, the definition of "reasonable travel time" needs some elaboration.

On page 58 under "Family Leave" in the next to last paragraph a word is omitted; it should read "with two weeks written notice".

On page 63 under "Education Leave" we feel we need explanation of "Agency authorized by law to subsidize" as to whether this includes local health departments.

On page 65, under item 3 of political activities, we question whether it is appropriate to exclude a state classification employee from service as an election official (we prefer to allow them to) and whether under the US Constitution you can infringe on freedom of speech by prohibiting wearing political logos during work hours. Also, the reference to distributing campaign literature in a state office building would need to be expanded to include our local health department buildings.

On page 66, under "Other Employment", item 1, the reference to "state government" needs to include the local level.

On page 68, under "grievance procedure" the working on filing a grievance with the "Education and State Employees Grievance Board" needs to be expanded to provide for local health departments. Perhaps even the name of this Board needs to be changed.

Thank you for your attention to these comments and these concerns.

Sincerely,

Curtis Dickson



AUG 11 '92 15:58 MOV-10 PARKERSBURG WV

Mid-Ohio Valley Health Department

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Chairperson

Judith L. Shannon
Vice-Chairperson

Anthony Minard
Treasurer

Curtis W. Dickson
Executive Director

TO: Mike McCabe

FROM: Curtis Dickson

DATE: 8-11-92

NUMBER OF PAGES: 4 (includes cover)

PLEASE CALL

FOR YOUR INFORMATION

AS YOU REQUESTED ✓

FOR YOUR AUTHORIZATION

COMMENTS:

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WEST VIRGINIA
DEPARTMENT OF HEALTH & HUMAN RESOURCESGaston Caperton
Governor

Memorandum

DATE: August 11, 1992

TO: Michael McCabe, Director, Office of Personnel Services

FROM: Larry Medley, Administrative Assistant, Office of Operations

SUBJECT: Proposed Division of Personnel Administrative Regulations

Thank you for the opportunity to provide input on administrative regulations. In regard to these regulations, I have the following questions/observations.

1. On page 19, item 3 - Pay on Position Reallocation. This seems to say that as a result of reclass, ones salary may be decreased. I thought this would not be possible under reclass.
2. On page 21, item 6.10 talks about Longevity Increases. Will these be automatic or will they be contingent upon funds being available in each office?
3. Page 31, item 1 says "the Director shall certify the top ten names or the names of any persons scoring at or above the ninetieth percentile". What determines which of these two methods the Director uses?
4. On page 36, item 10.04 b says intermittent employment shall not be followed by temporary employment. This will have a detrimental affect on how we use intermittent and temporary employees. We sometimes spend three or four months training these people and would like to rehire them as temps when their intermittent appointment has expired. Also, what is the difference between an intermittent appointment as described on page 36 and a temporary appointment as described on page 37, item 10.065?
5. On page 37, item 10.065 says "successive temporary appointment to the same position shall not be made . . .". Are we talking about an individual that cannot be rehired or are we saying that after 945 hours no one can be hired to fill that temp position? Certainly we rely heavily on temporary positions and need them filled twelve months a year not merely once for 945 hours.
6. On page 40, item 11.065 talks about dismissal during probation. I have two observations. First, I wish this could be written to allow us to terminate probationary employees, if we feel the need, in a very quick and simple manner. Second, it needs to be stated that the policy of progressive discipline as it applies to permanent employees does not need to be followed.

August 11, 1992

Michael McCabe

Proposed Division of Personnel Administrative Regulations

Page 2

- ✓ 7. On page 42, item 12.06. Is there no longer an involuntary transfer formula that must be applied when an employee is forced to transfer?
8. Page 43, item 13.03. Is there no maximum number of days that an employee can be suspended?
9. Page 50, item d. This section seems to be somewhat self-contradictory.
10. Page 58, next to last paragraph has a word missing. I believe you mean to say - If a leave because of birth or adoption is foreseeable, the employee shall provide the employer with two weeks written notice. You failed to include weeks.
11. Page 62, item 16.11 Court Jury and Hearing Leave says "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 will be very difficult to enforce in trying to determine if an employee meets the guideline. It will involve some very personal questions and could violate confidentiality.

LM:vgr

WEST VIRGINIA
DEPARTMENT OF HEALTH & HUMAN RESOURCES



Gaston Caperton
Governor

Memorandum

DATE: August 11, 1992

TO: Michael F. McCabe, Director, Office of Personnel Services

FROM: Mary Ann Dean, Regional Administrator, Operations - Region IV

SUBJECT: Proposed Division of Personnel Administrative Regulations

Our comments will be brief as we only received this in the p.m. of August 6th.

1. We would prefer that annual and sick leave could be taken in increments of less than one-half hour.
2. The regulations say that if using sick leave for more than three days, the employee must have a statement releasing them to return to work or you dock their pay. It has always been my understanding that employees need to furnish a doctors statement after three days to release the Agency of liability. Is this not the case?
3. The manual material stated that if on leave of absence that the Agency can consider filling the position. How do we fill the position if the person who is on leave of absence is occupying the position as far as our allocation is concerned?

I would also hope that something would be included in this policy regarding employees paying for insurance while on leave of absence if they are on Worker's Compensation.

4. Would like to see clarification on what must be done when an employee is on approved annual leave and someone in his immediate family dies. At what point must the employee request that the annual leave be changed to sick leave?
5. If travel for sick leave is 3 hours, then that also needs to be included in the section Family Sick Leave. "Reasonable time" for those who live in Charleston may not be reasonable for those who live in Webster, Pocahontas, or Monroe Counties, for example. I strongly disagree with the 3 hours.
6. Would like to see something in material to indicate an employee can freeze annual leave while on personal leave of absence.

Thank you for the opportunity to comment.

MAD:sr



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Gaston Caperton
Governor

MEMORANDUM

TO: Michael F. McCabe, Director
Office of Personnel Services

FROM: Sterling Smith, Assistant Director
Office of Maternal and Child Health *SS*

RE: Proposed Division of Personnel
Administrative Regulations

DATE: August 12, 1992

Section 7.04, Disqualification of Applicants (page 24, number 2): The statement concerning disabled applicants should be looked at and defined somewhat more clearly than the definition on page 4 of the proposed regulations.



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

10 McJunkin Road
Nitro, WV 25143-2506

Gaston Caperton
Governor
John M. Ranson
Cabinet Secretary

David C. Callaghan
Director
Ann A. Spaner
Deputy Director

August 19, 1992

MEMORANDUM TO Mike Smith, Director of Personnel
SUBJECT Proposed Rule Changes

The attached comments are offered for consideration regarding the proposed changes to the current rules and regulations.

We understand and support the need for some revisions and appreciate having this opportunity to comment. Favorable consideration of our suggestions would be appreciated.


David C. Callaghan
Director

DCC/clp

Attachment

WV DIVISION OF ENVIRONMENTAL PROTECTION COMMENTS RE: PROPOSED
CHANGES TO ADMINISTRATIVE RULES-7 REGULATIONS OF THE WV DIVISION OF
PERSONNEL

The following comments are random in nature and meant to pose questions and or offer reasons/suggestions; specific comments, to include a line by line comparison for some items are being prepared and will be forthcoming, unless such are addressed during the hearing.

Regarding SALARY, DAILY RATE, and related references: Employees are hired at a monthly rate, an annual rate, and are listed with an hourly rate. The currently used bi-monthly pay period is simply one of convenience to the employer, but was never intended to alter or change the employee's rate of pay from pay period to pay period. Calculations for partial pay periods only require that the value of the portion worked, when added to the value of the portion not worked equals the whole.

Further, regarding deductions from a subsequent pay period for unauthorized leave, etc., would require double calculations -- the value of the time missed, say one day, versus the value of the time being docked, when the rate of pay for the "day" is subject to constant change within the same month.

References are made throughout the regulations to leave -- some are being changed to refer to leave in terms of days, while others still refer to leave in terms of hours. Also, references are made to time of day, when such references should refer to portion of the work day (leaving the payroll at 2:00 p.m. on 8/20/92, is not useful or complete information; leaving the payroll 8/20/92, with 6.00 hours, fully explains the time and pay due.

References are made to a sick leave request/reporting form to be prescribed by DOP. Prior forms of this nature have sought/required medical information that appears personal and confidential in nature and is not necessary to the approval or denial of such leave; the medical professional determines the necessity for the leave and the appointing authority considers requests in accordance with current rules.

References to separation, last day of employment, etc. -- generally clarifies issues regarding entitlement to salary advancements, the earning of leave, etc.; however, in cases regarding the proposed "terminal" leave payment, the change to "not" deduct retirement contributions appear to be a problem, both for the agency and for the employee leaving active service. Retirement service is based on "contributing" service -- no credit would be given for terminal leave paid out through the pay period(s) following last day of active work? This would again encourage employees who wish to retire to request use of all annual leave "prior" to last day of active work in order to receive full credit. For example, an employee may be retiring at the end of October -- last works on September 30, requesting leave through October 31, and any balance,

- 10/31/92
10/31/92

sick or annual, being applied to insurance premiums, etc. However, if the October pay is not "contributing," then the employee has 9 months service for that year -- if it was contributing, the employee receives a full year's service for the ten months -- this makes a difference in retirement annuity.

Further, if the terminal pay period is not "contributing," what effect does this have on insurance coverage? Retirement insurance coverage does not apply until retirement is effective, and retirement cannot be effective until the month following the month the employee leaves the agency payroll. If separation is deemed to have occurred on the last work day, but retirement cannot occur until a later period, the employee's insurance status could be in doubt. The same doubt would exist in cases of death of an active employee, as to the status of the employee's eligible dependents and their entitlement to continued insurance coverage and retirement annuity payments.

Status of employees on sick leave or medical leave of absence, or other leave or leave of absence, if the last day of actual work was considered the separation date --- the relationship was not severed when the employee went on leave -- it was severed due to other circumstances, and it should be clear that an employee continues to earn leave until the employee-employer relationship has been severed by action of the employee, or of the employer, or of circumstances, unforeseen or unknown, etc. For example, an employee takes a two-week vacation and while returning from leave, is killed in an accident. Leave accrual should not cease retroactively, but should cease on that date of death -- the date the relationship was severed. Further, pay due should be "contributing" for retirement, insurance coverage remained effective, etc.

References in pay appear to have moved from STEP to INCREMENT. Under current and common use, practice and understanding, a step is generally considered to contain two increments (half-steps), as movement in Step 11 from A to B is considered a half-step or one increment. Movement from Step 11 A to Step 12 A is considered a step (consisting of two increments). Is this change in wording intended to reduce the dollars an employee may receive with a salary advancement and/or in any one year?

Posting or charging of leave. Once again, the MINIMUM charge of 1/2 hour, and the subsequent requirement of "multiples of 1/2 hour" are not reasonable, logical or necessary. For example, an employee should be entitled to request, use and be charged for an absence of 1 3/4 hours if that is the time requested/required for the leave.

If this is intended to be "convenient" to record-keeping, then absences of "less than . . ." may be accrued and charged when 1/2 hour is reached, etc., would solve it -- gone "five minutes extra" to get to the bank at noon, etc. However, 1/4 hour appears the most reasonable, logical, etc., and all or nearly all current systems can accommodate posting/charging of leave in 1/4 hour

increments. Further, according to federal standards, periods of time to be considered "de minimums" as to payment, docking, etc., are certainly not as large as 1/2 hour. On the employee side, to be "charged" 1/2 hour when only absent 1/4 hour is "unfair," and could simply encourage brief absences to be of a longer duration than actually requested, needed or required. Also, could arriving ten minutes late be construed to be an "unauthorized" absence, and subsequent to the docking of pay, versus the charging of leave?

Temporary, intermittent, etc. -- why not change the 945 hours? It appears to be a carry-over from a daily calculation of 7.5 hours per day, as it does not divide evenly under any other method. Why not have 1,000 hours -- an even number of hours to work "against," as well as even days or half-days.

As to not following temporary by intermittent, nor intermittent by temporary, this does not appear "fair" to the individuals. Persons employed from intermittent registers have tested, stated availability for intermittent work, understand it is temporary in nature, etc. However, a period of temporary work should not preclude an appointment from this established register.

The section regarding nepotism -- it would appear difficult, if not impossible, to "resolve" a situation that occurs because of marriage, adoption, etc., without being "involved" in a "discussion concerning employment, assignment, etc."

More logical, practical and workable would be to retain the "not directly supervise" provision, and to state the same prohibitions of attempting to influence employment or conditions of employment to advantage or disadvantage of immediate family members, etc.



Public Employees Insurance Agency

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MEMORANDUM

Gaston Caperton
Governor

Sally K. Richardson
Director

TO: Michael T. Smith, Director
Division of Personnel

FROM: Sally K. Richardson *SKR*
Director

DATE: August 17, 1992

SUBJECT: DIVISION OF PERSONNEL
RULES AND REGULATIONS

The proposed Administrative Rules and Regulations promulgated by the Division of Personnel were reviewed by members of the PEIA staff. Following are changes recommended:

On ~~page 6~~, under the definition of "~~Job Abandonment~~": the definition of job abandonment is vague. I would suggest that the definition include specifics such as "failure to report to work after three working days..." or "manifestation of intention not to return to work...".

Also on ~~page 6~~, the definition "~~Leave~~": I would suggest that either "paid" or "compensated" be added between the words "of" and "time".

On ~~page 7~~, under the definition of "~~Minimum Qualifications~~": I would suggest that the words "for that class of position" be added at the end of the paragraph.

Also on ~~page 7~~, under the definition of "~~90-Day Exempt Appointments~~": I would suggest that the personnel-defined ~~therein be specified as non-classified~~ if that is the case.

On page 8, under the definition of "Promotion": I question whether the last phrase in the sentence, "as measured by salary range and increased level of duties and/or responsibilities" is not redundant. Though increased salary and level of duties and responsibilities seems a natural part of a promotion are they necessarily included in the definition of promotion? If so, then the wording may remain the same, though I would suggest that it be tightened to provide that higher salary and increased level of duties be included as mandated components of the definition of promotion.

Michael T. Smith, Director
August 17, 1992
Page Two

On the same page 8, under the definition of "Provisional Appointment": I think that the definition should address whether there is any guarantee that if the employee successfully passes the exam and is placed on the register, that the employee will become a permanent classified employee in that position.

On page 9, under the definition "Salary Adjustment": I would suggest revision of the first sentence as follows: "A salary change which may result from any of the following examples, including but not limited to: revision of the pay plan or reassignment of a class to a different pay grade...".

On the same page 9, under the definition of "Salary Advancement": I ask how salary advancement is distinguished from merit increases, and I question whether there are any other grounds for getting salary advancement than "meritorious performance". I would suggest that professional longevity and improved performance may be two additional criteria to be considered.

On page 10, under the definition of "Termination" ~~I think that "separation" needs to be better defined.~~ For example, whether the separation is involuntary or "for cause". Also, ~~I think "Limited Term Employment" should be better defined.~~

On page 18, delete "for" following word "require" in (f) ~~g-l-a, line 6.~~

On page 24, remove "habitual" and "to excess" which are ~~not necessary and sometimes confusing terms describing alcohol addiction.~~

I trust these recommendations are beneficial to you. If further assistance is needed from PEIA, please feel free to give me at call.

SKR/lq

cc: Tari Crouse, Assistant Director
Employees Communications

David P. Lambert, Acting Deputy Director, PEIA

West Virginia Division of Personnel

AMENDMENTS MADE TO THE PROPOSED AMENDMENTS TO THE EXISTING RULE
AS A RESULT OF COMMENTS OR OTHER INFORMATION RECEIVED
AND REASONS FOR THE AMENDMENTS

1. Numerous corrections were made to spelling, punctuation, grammar, phrasing, terminology and inadvertent omissions or errors without substantive effect on the content of the proposed amendments.
2. The definition of Agency was expanded to include "or a political subdivision" in recognition of the participation of county boards of health in the merit system administered by the Division of Personnel. This recognition was expressed in many sections throughout the regulations in references to both agencies and employees.
3. The following definitions were changed, added, or substituted for deleted definitions to provide additional clarification of terms used in the body of the regulations: annual leave, allocation, effective date of separation, fitness, incapacity, increment, job abandonment, minimum qualifications, register, salary advancement, and, sick leave.
4. In Section 7.12, a phrase regarding confidentiality of examination records was added in keeping with the cited statute.
5. In Section 13.04(i), a sentence was added to clarify for employers that preference hiring may be done by original appointment or reinstatement.
6. Section 18.04, specifying the prohibited political activities for Rehabilitation Services employees in accordance with that agency's enabling legislation, was added.
7. Section 19.02, Nepotism, was amended to delete dismissal as a means of resolving prohibited business relationships between members of immediate families and to allow other accommodations which protect the public interest.



Gaston Caperton
Governor

Michael T. Smith
Director

STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
DIVISION OF PERSONNEL

STATE PERSONNEL
BOARD

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

MEMORANDUM

TO: Chuck Polan, Cabinet Secretary
Department of Administration

FROM: Michael T. Smith, Director *Mike*

RE: Amendments to Administrative Regulations

DATE: July 10, 1992

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

These amendments will be presented to the State Personnel Board at their July 16th meeting for approval of the filing with the Secretary of State's Office for a public hearing tentatively scheduled for August 20, 1992. After the public hearing, the amendments, as well as any changes resulting from public hearing comments, will be submitted to the State Personnel Board for their approval for filing with the Legislative Rule-Making Review Committee.

Your approval of the filing of these amendments to our administrative rules and regulations is respectfully requested. Thank you.

Chuck Polan
Chuck Polan, Cabinet Secretary
Department of Administration
July 13, 1992

MTS:TMC/

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

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NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Division of Personnel TITLE NUMBER: 143

RULE TYPE: _____; CITE AUTHORITY W.V. Code §29-6-10

AMENDMENT TO AN EXISTING RULE: YES X NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: I

TITLE OF RULE BEING AMENDED: Administrative Rules and Regulations of the
West Virginia Division of Personnel

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

TITLE OF RULE BEING PROPOSED: _____

DATE OF PUBLIC HEARING: August 20, 1992 TIME: 2:00 p.m.

LOCATION OF PUBLIC HEARING: State Capitol Complex
Building 6, Room B-430-C
Charleston, West Virginia

COMMENTS LIMITED TO: ORAL _____, WRITTEN _____, BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Division of Personnel
1900 Kanawha Blvd., E.

The Department requests that persons wishing to make
comments at the hearing make an effort to submit written
comments in order to facilitate the review of these comments.

Building 6, Room 416
Charleston, WV 25305-0139

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

AMENDMENT TO THE ADMINISTRATIVE RULES AND REGULATIONS
OF THE
WEST VIRGINIA DIVISION OF PERSONNEL

Existing rules are being amended:

1) in compliance with legislation amending W.V. Code as follows:

▶ §29-6 et seq.: establishing preference hiring for permanent, classified employees who are laid off from state agencies; modifying the definition of veterans' preference points; establishing a section on employee organization bulletin boards.

▶ §15-1F-1: extending paid military leave benefits to state officers and employees called to active duty by the President.

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

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Administrative Rules and Regulations of the West Virginia Division of Personnel

Type of Rule: Legislative Interpretive Procedural

Agency Division of Personnel Address State Capitol Complex
Building 6, Room 416

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates:

No additional costs; implementation of statutory provisions.

3. Objectives of these rules:

Comply with statutory authority to promulgate rules per W.V. Code §29-6-10

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

No additional economic impact to that of statutes already in effect.

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

None.

C. Economic Impact on Citizens/Public at Large.

None.

Date: July 17, 1992

Signature of Agency Head or Authorized Representative

Michael T. Smith

Michael T. Smith, Director, Division of Personnel