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NOTICE OF AN EMERGENCY RULE

AGENCY: West Virginia Civil Service System TITLE NUMBER: 143

CITE AUTHORITY: Chapter 29-6-10

EMERGENCY 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 Civil Service System

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: ___

TITLE OF RULE BEING FILED AS AN EMERGENCY: ___

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

In case styled AFSCME v. West Virginia Civil Service Commission, No. 17929, the Supreme Court of Appeals directed the Civil Service Commission to promulgate regulations to implement the fourth step of the classification review process within thirty days from the Court's order of May 20, 1988. These rules represent compliance with the Court's decision.

Use Additional Sheets If Necessary.

Lowell A. Basford

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

CIVIL SERVICE SYSTEM

Chapter 29-6-10
Series I

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Subject: Filing of Administrative Rules and Regulations of the West Virginia Civil Service System

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Section 1. General

1.01. Scope-These regulations establish rules for the West Virginia Civil Service System.

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

1.03. Filing Date-These regulations are promulgated on the 21st day of June, 1988, and filed on the 21st day of June, 1988, in the Secretary of State's Office.

1.04. Effective Date-These regulations become effective on the Twenty-First day of June, 1988.

Section 2. Preamble

Sec. 2.01. Preamble. The general purpose of the Civil Service System 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 Civil Service 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, are included in a classification plan known as classified-exempt service.

Section 3. Definitions

Accrue: To increase or accumulate periodically or by increment.

Agency: Any administrative department of state government 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.

Appeal: The complaint to the Civil Service Commission to correct or reverse an alleged injustice done or error committed.

Appointing Authority: The executive or administrative head of a department 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.

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

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

Civil Service System: The agency responsible for the system of personnel administration for the classified and classified-exempt service.

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

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

Classification Plan: The official lists of classes to 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.

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

Section 3. Definitions (Cont'd)

Classified-Exempt Service: Those positions which satisfy the definitions for "class" and "classify" but which are not covered under the Civil Service System or by the Board of Regents.

Classified Service: Those positions which satisfy the definitions for "class" and "classify" and which are covered under the Civil Service System.

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.

Commission: The Civil Service Commission 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.

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 Civil Service agencies.

Continuance: To postpone an appeal hearing to a future date.

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 employee of an agency affiliated with the Civil Service System.

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

Decorum: Use of polite behavior when appearing before the Civil Service Commission.

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, who serves as the executive head of the Civil Service System.

Discovery: The initial revealing of information.

Discretionary: Open to individual choice or judgement.

Section 3. Definitions (Cont'd)

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

Docket: List of employees who have filed an appeal or complaint with the Civil Service Commission and who are either awaiting review of eligibility for a hearing or awaiting a scheduled hearing.

Effective Date: The established date the action takes place.

Eligible: An applicant accepted for a Civil Service System examination who receives a final passing rating 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.

Employee-Appellant: Individual who has filed an appeal with the Civil Service Commission and has been granted a hearing.

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).

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

Grievance: Any matter of concern or dissatisfaction to an employee which is subject to the control of the agency management except those matters exempted under Article XXIII, Section 1.2 (see 1.2 Grievance).

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.

Hearing Board: The body which hears grievances.

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.

Incumbent: A person occupying a position in the classified service.

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

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

Section 3. Definitions (Cont'd)

Intermittent Appointment: An appointment 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 Employment: Work hours which are not symmetrical from week to week.

Lateral Class Change: The movement of an 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.

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

Length of Service Category: The grouping of 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: A 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 Civil Service Commission for employment in a class of position and admission to an examination.

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

Ninety-Day Exempt Appointment: Personnel employed for less 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 who works less than the full-time work schedule established for an agency.

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

Section 3. Definitions (Cont'd)

Pay Plan: 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 in a pay plan.

Per Diem: A daily allowance.

Permanent Employee: An employee who was hired from a register and who has completed the probationary period prescribed by the Civil Service Commission for the job class.

Personnel Officer: That employee of each agency who is immediately responsible for the personnel administration of the agency.

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.

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

Probationary Period: A specified trial work period prescribed by the Civil Service Commission 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 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 of a position to a different class by the Director of Personnel.

Section 3. Definitions (Cont'd)

Reclassification: The revision 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.

Reduction-in-Force: A layoff of employees occasioned by curtailment of funds or reduced work load.

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 Civil Service examination for the class of position.

Regular Part-time Employment: Work hours which are symmetrical from week to week, but are less than the full time work schedule established for the agency.

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

Resignation: Voluntary separation from employment made at the request of the employee.

Salary Adjustment: A salary change resulting from a revision to the pay plan or the reclassification of a class to a different pay grade.

Salary Advancement: A salary increase within the range prescribed for the class by the classification plan.

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

Seniority Rights: The right to continue to hold a certain job, based on length of service.

Served, Serving or Service of Process: Presentation of documents to a person either in person or by the United States mail. Service by mail is complete at the time and date of mailing.

Service: Employment time which may be used for determining annual leave accrual and order of separation in a reduction-in-force.

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

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

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.

Section 3. Definitions (Cont'd)

Stipulation: Formal written agreement between parties.

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

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

Technical Rules of Evidence: Rules applied to civil and criminal court cases but not to administrative hearings.

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

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 Commission.

Transfer: The change of an employee from a position in a given class to a different position in the same class in 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.

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 11 (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. 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.

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

Section 4. Organization

4.01. Civil Service Commission-A Civil Service Commission consisting of three members shall be appointed by the Governor by and with the advice and consent of the Senate. Members shall serve for a term of six years or until successors have been appointed. See Section 5, Article VI, Chapter 29.

4.02. Qualifications of Civil Service Commission-The present merit system council shall be transformed into the Civil Service Commission. The members of the Commission shall be persons in sympathy with the application of merit principles to public employment. No member of the Commission shall be a member of any local, state, or national committee of a political party or an officer or member of a committee in any partisan political club or organization or shall hold, or be a candidate for, any paid public office. Not more than two members of the same political party shall serve on the Commission at the same time.

4.03. Duties of the Commission-In addition to the duties expressly set forth elsewhere in this law, the Commission shall:

(a) Represent the public interest in the improvement of personnel administration in the state service.

(b) Advise the Governor and the Director on problems concerning personnel administration.

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

(d) Make any investigation which it may consider desirable concerning the administration of personnel in the state service, and make recommendations to the Director with respect thereto.

(e) Make an annual report and special reports and recommendations to the Governor.

(f) Approve the budget as prepared by the Director for administration of this article before submission to the director of the budget.

(g) The Commission shall elect one of its members chairman. It shall meet at such time and place as shall be specified by call of the chairman or the Directors. 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. Two members shall constitute a quorum for the transaction of business.

(h) Members of the Commission shall each be paid seventy-five dollars for each day devoted to the work of the Commission, but not more than eighteen hundred dollars in any one year. They shall be entitled to reimbursement for necessary traveling and other expenditures necessitated by their official duties.

Section 4. Organization (Cont'd)

4.04. Director of Personnel

(a) Upon recommendation of the Civil Service Commission, the Governor shall appoint a Director of Personnel. In formulating its recommendations for a Director, the Commission shall observe the following:

1. Director shall be a person who has had training or experience in personnel administration or a related field.

2. He shall be one who has known sympathies with the merit principle of government service.

3. He shall be selected from a register established as a result of competitive examination in the same manner that other Civil Service employees are selected.

4. He shall not be a candidate for or hold any elective public office nor shall he be a member of any political committee, nor shall he serve as an election official, nor shall he engage in any political activity other than to vote in behalf of or in opposition to any candidate, political party or public issue involved in the election.

(b) The salary and expenses of the Director and his staff shall be met out of any funds available for the purpose and shall be paid upon certification of the Director, in such manner as the expenses of other state employees are paid.

(c) The Director, as executive head of the department, shall direct and supervise all its administrative and technical activities. In addition to the duties imposed upon him elsewhere in this law, it shall be his duty:

1. To apply and carry out his law and the rules adopted thereunder.

2. To attend meetings of the Commission and to act as its secretary and keep minutes of its proceedings.

3. To establish and maintain a roster of all employees in the state Civil Service, in which there shall be set forth, as to each employee, the class title, pay or status, and other pertinent data.

4. To appoint such employees of the department and such experts and special assistants as may be necessary to carry out effectively the provisions of this law.

5. To foster and develop, in cooperation with appointing authorities and others, programs for the improvement of employee effectiveness, including training, safety, health, counseling and welfare.

6. To make available to the public information about vacancies in the classified service and to strive constantly to attract to the career service of this State people of the highest ability.

Section 4. Organization (Cont'd)

7. To investigate from time to time the operation and effect of this law and of the rules made thereunder and to report his findings and recommendations to the Commission and to the Governor.

8. To make an annual report regarding the work of the department, and such special reports as he may consider desirable, to the Commission.

9. To prepare the annual budget for the department of personnel and when approved by the Commission, submit it to the director of the budget.

10. To perform any other lawful acts which he may consider necessary or desirable to carry out the purposes and provisions of this law.

11. To furnish copies of the minutes of all regular meetings of the Commission to each participating agency.

(d) In the event of the absence of the Director or his inability from any cause to discharge the powers and duties of his office, the Commission may from time to time designate in writing an employee of the department to act for him. In such case, the powers and duties of the Director shall devolve upon such employee designated by the Commission.

(e) The Director may designate appropriate persons, including officers and employees in the state service, to assist in the preparation and rating of tests. An appointing authority shall excuse any employee in his division from his regular duties for the time required for his work as an examiner. Such officers and employees shall not be entitled to extra pay for further services as examiners but shall be entitled to reimbursement for necessary traveling and other expenses.

4.05. Agency Personnel Officer-Each state agency shall designate a staff employee to serve as Personnel Officer. It shall be his responsibility, with such clerical assistance as may be necessary, to assure compliance with the classification and compensation plans as established by the Commission; to maintain personnel records of all persons employed in the agency, and records of all personnel actions; to notify the director as far in advance as possible of vacancies which may occur in the agency; and to perform such other duties as are prescribed in this rule and as the appointing authority may direct.

Section 5. Classification Plans

5.01. Preparation of Plans-The Commission, 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. Classification Appeals

(a) As a result of a reclassification action or a request for position reallocation, the incumbent may petition for reconsideration of the position classification. The request shall be in writing stating the reasons for the request and shall include a current description of the duties and responsibilities assigned to the position on a form prescribed by the Director. The position description form shall be completed by the employee and the appointing authority.

(b) First Review-Within ten (10) days from the date of a reclassification action or within ten (10) days from becoming aware of the alleged position misclassification, the employee shall submit a completed position description form together with a written request for classification review to the agency personnel officer. The personnel officer shall make a determination on the classification of the position and shall respond to the employee in writing within thirty (30) days from the receipt of the request. A copy of the agency determination and the completed position description form shall be submitted to the Director of Personnel.

Section 5. Classification Plans (Cont'd)

(c) Second Review-Within fifteen (15) days from receipt of the agency determination, the employee may petition the classification and compensation division for a classification review. The review shall provide for the submission in person by the incumbent and the agency of any and all pertinent information regarding the current duties and responsibilities assigned to the position. The classification and compensation division shall conduct the review and issue a written determination to both parties within thirty (30) days from receipt of the request. The written determination by the classification and compensation division shall be submitted to the incumbent and the appropriate appointing authority.

(d) Third Review-Within fifteen (15) days from receipt of the classification determination of the classification and compensation division, the employee or the appointing authority concerned may request in writing for reconsideration by the Director of Personnel. The Director shall review all information and documentation submitted in relation to the position and issue a determination in writing within thirty (30) days from receipt of the request for reconsideration. A copy of the Director's determination shall be sent to the incumbent and the appropriate appointing authority.

(e) Fourth Review-Immediately upon issuance of the Director's determination, the Director shall send a copy of that determination to the Commission for its review. The Commission, at its discretion, may order a hearing on the determination. Whether or not the hearing is held, the Commission has the power to affirm, reverse or modify the determination of the Director. If the Commission declines to hold a hearing on the determination, the Commission's decision about the determination must be issued within forty five (45) calendar days of the Commission's receipt of the determination of the Director. If the Commission orders a hearing on the determination, the Commission's decision about the determination must issue as does any other appeal. A copy of the Commission's decision shall be sent to the incumbent and the appropriate appointing authority.

(f) Back Wages-A claim for back wages based on the alleged misclassification shall be submitted within thirty (30) days from the date of the final classification determination. The request shall be in writing and shall be submitted to the Director of Personnel and the appointing authority. The procedure and method for the determination of back wages shall be completed in a manner and form prescribed by the Commission.

(g) A claim for back wages based on an alleged period of misclassification terminating on or before January 1, 1985, will not be considered unless such claim was submitted in writing to the appointing authority or to the Commission within six (6) months of the last day of the period of misclassification or of January 1, 1985, whichever is later.

Section 6. Compensation Plan and Salary Regulations

Pursuant to the provisions of Chapter 29, Article VI, Section 10 (2) of the Code of West Virginia, the following salary regulations shall apply to employees covered by the Civil Service System.

6.01. Purpose and Intent-To attract qualified employees and retain them in the classified service, the Commission 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 Commission 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 Commission 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, intervening, and maximum rates of pay for each grade. 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 Commission shall assign each class of positions to an appropriate pay grade consistent with the duties outlined in the class specification. No salary shall be approved by the Director of Personnel unless it conforms to one of the pay rates in the pay grade assigned to the employee's class of position.

(b) Entry Salary-The entry salary for any employee shall be at the minimum salary for the class. However, an individual possessing qualifications, pertinent training, or experience above the minimum required for the class, as determined by the Director, may be appointed at any pay rate above the minimum, unless otherwise limited by the Commission. For each step above the minimum, the individual must have in excess of the minimum requirements at least six months of pertinent experience or equivalent pertinent training.

(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.

Section 6. Compensation Plan and Salary Regulations (Cont'd)

(d) Additional Pay-Except for authorized overtime or shift differential, no pay additional to the regular salary shall be made to any employee. The rates as provided do not include reimbursements for actual and necessary expenses incurred incident to employment such as travel expense. Additional duties imposed or volunteered shall not constitute an exception to this rule.

(e) Availability of Funds-Before a department makes salary adjustments and advancements in accordance with 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 in the new plan corresponding to his step in the old plan. If it is impossible due to budgetary restrictions to adjust an incumbent's pay on a step-for-step basis, the Commission shall provide for 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.

c. 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 Commission 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 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 in the range, the salary shall be adjusted to the next higher rate in the new range.

4. 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.

b. Lower Minimum

1. When a class is assigned to a salary range having a lower minimum,

Section 6. Compensation Plan and Salary Regulations (Cont'd)

the salaries of those incumbents which coincide with a step 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 in the range, the Commission 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 and who is 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 rate of the new class. If the incumbent's current pay rate is at or above the minimum rate for the new class, but coincides with a step in the new range, the salary shall be adjusted one step in the range. Where the pay rate does not coincide with a step in the new range, the salary shall be adjusted to the next higher rate which provides at least a full step increase.

(b) Additional Increase-The appointing authority may grant additional steps 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 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 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 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 in that range, his salary shall be reduced at least to the next lower step 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 rate of pay does not coincide with a step in the new range, the salary shall be adjusted to the next higher rate.

Section 6. Compensation Plan and Salary Regulations (Cont'd)

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 Commission. 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-All salary advancements shall be based on merit as reflected by service ratings and other recorded measures of performance.

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

(c) When made-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) Exceptionally Meritorious Service-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 more than two steps, including advancements for exceptionally meritorious service, in any twelve (12) month period.

6.10. Longevity Increases

(a) Eligibility-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.

(b) Additional Longevity Increases-In the same manner, an employee otherwise not receiving a salary increase in each succeeding 12 month period shall be eligible for a longevity increase.

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 Commission.

(b) Examinations shall also include:

1. A rating of training and experience for the more responsible professional, technical, supervisory and administrative positions;

2. 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 Commission, 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) The Director shall assign definite weights to each part of the examination prior to its public announcement. 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 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 per-

Section 7. Applications and Examinations (Cont'd)

formed, the minimum qualifications required, the final date on which applications will be received, 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 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 Commission, at its 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 Commission and must be filed with the Director 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 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, the Director, with the approval of the Commission, 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 Commission, the Director may refuse to examine an applicant, or after examination, may disqualify such applicant or remove his name from a register, 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;

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

Section 7. Applications and Examinations (Cont'd)

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. 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;

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

13. he 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 six months 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 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 14.03(a).

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

Section 7. Applications and Examinations (Cont'd)

administer more effectively a continuous recruitment program as provided for in Section 7.03(b). 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.

7.06. Rating 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 disqualify the applicant in the entire examination and shall 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 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 Commission, shall utilize appropriate scientific techniques and procedures in rating the results of examinations and in determining the final scores of the competitors. In determining the system for rating results on the examination, the Director and the Commission 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 Commission, shall determine a procedure for the evaluation of the training and experience qualification of the various applicants. The formula used in appraisal shall give due regard to 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.

Section 7. Applications and Examinations (Cont'd)

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 Commission, 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 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 Commission 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 Commission provided the Director certifies that it is administratively practicable. The Commission'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 Commission 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.

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

Section 7. Applications and Examinations (Cont'd)

7.13. Examination Records-The Director shall be responsible for the maintenance of all records pertinent to the examination program. 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-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.

8.02. Duration of Registers

(a) The life of each 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 Commission. 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 Commission, 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) 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 Commission 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 Personnel Officer 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.

8.03. Removal of Names from Registers

(a) Under the supervision and direction of the Commission, the Director may remove the name of an eligible from a register:

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

2. on evidence that the eligible cannot be located by reasonable efforts through the various means of communications.

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

Section 8. Registers (Cont'd)

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

(b) The Director shall notify the eligible by mail to his last-known address of this action and the reasons therefor. 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 Commission upon appeal as provided in Section 14.05(a).

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 Personnel Officer 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 certify and submit in writing to the Personnel Officer the names of available persons on the appropriate original 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).

1. If only one position is involved, the Director shall certify and submit the names of the five highest available eligibles, except as provided for in sub-paragraph (b). The Director may certify more than five names at his discretion.

2. If more than one position is involved, the Director may, with Commission approval, certify the names of the highest available eligibles equal in number to eight times the number of positions to be filled divided by three.

3. If the original register established as a result of a Civil Service examination for a specific class of position is exhausted, the Director shall 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 Commission, 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 Commission, deems appropriate, then the Director may certify and submit names from a register established as described in Section 8.02.

(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.

(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.

Section 9. Certification of Eligibles (Cont'd)

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

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

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 Commission 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 Commission, 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 10.03 and 10.04 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 from the five highest available names on the register, as determined by Section 9.02 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 which objection is sustained by the Director with the approval of the Commission.

Section 10. Appointments (Cont'd)

(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 Personnel Officer to the Director.

(c) If the eligible selected declines the appointment, evidence of declination and other such data shall be transmitted to the Director of 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 are no available eligibles on the 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 Personnel Officer 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 Article 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.

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

Section 10. Appointments (Cont'd)

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 five highest available names on the list. 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) In no case shall intermittent employment of an individual continue for more than six months in any twelve-month period beginning with the date of the original intermittent appointment.

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 Personnel Officer shall immediately report each emergency appointment to the Director in writing with explanation of the nature of the emergency.

10.06. 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 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 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.

10.07. Posting of Job Openings-Whenever a job opening occurs in the classified service, the appointing authority shall post a notice within the building, facility or work area and throughout the agency that candidates will be considered to fill the job opening. The posting of the notice shall be at least ten (10) working days before making an appointment to fill the

Section 10. Appointments (Cont'd)

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 promotion, lateral class change, or transfer.

(b) A vacancy is any full-time permanent unfilled budgetary position or any full-time permanent new position created by a reorganization or realignment of job functions.

(c) 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. When appropriate, the posting notice may specify two classes in a promotional series.

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) 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 under Section 23 of these Rules and Regulations within five working days of becoming aware of the event or within five working days of when they should have become aware of the event.

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 Commission, after consultation with the Advisory 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. 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.

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 include a service rating upon a form prescribed by the Director of Personnel. In the event it is determined that the services of the employee shall be retained, the Personnel Officer 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

Section 11. Probationary Period (Cont'd)

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.

11.04. 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.

11.05. Transfers during Probation-An employee shall not be transferred during his probationary period to a position in another class for which a 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 register exists until at least 60 days after his appointment from the local area register.

11.06. 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 from the service, but such action shall take place only after the person to be discharged has been presented with the reasons for such discharge 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 shall be given to the employee 15 calendar days prior to the effective date of his release, and no further salary shall be paid to him except in payment for accrued annual leave. Fifteen days notice shall not be required for employees in certain classes where the Commission 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 Commission and after consultation with the appointing authority, may restore the name of a probationary appointee whose services have been terminated 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 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 Non-Competitive 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, 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 presented with the reasons for such reduction stated in writing, and has been allowed a reasonable time to reply

Section 12. Promotions, Demotions and Transfers (Cont'd)

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. In all such cases the employee shall have the same right of appeal to the Commission as employees who are dismissed. A probationary employee may be demoted as provided for in Section 11.04, but shall not have the right of appeal to the Commission.

12.05. Transfers

(a) Except as otherwise provided in Section 11.05, a transfer of an 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 these Rules and Regulations shall apply to all full-time 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 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 shall be filed with the Director of Personnel. Fifteen days notice shall not be required for employees in certain classes 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 when the cause of dismissal is gross misconduct.

13.03. Suspension-The appointing authority may, upon oral notice confirmed in writing or by written notice, 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 employee may be suspended without pay for less or more than thirty (30) calendar days, pending the outcome of the criminal proceeding. Permanent employees shall have the right to appeal to the Commission if suspended for more than thirty (30) calendar days in any twelve month period. 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 appointing authority shall file the statement of reasons for suspension and the reply with the Director of Personnel.

13.04. Reduction-in-Force-The appointing authority may release any employee, without prejudice, because of lack of funds or curtailment of work, or in order to permit reinstatement of employees upon their release from periods of military service in the armed forces of the United States. No permanent employee, however, shall be released while there are emergency, intermittent, temporary, provisional, or probationary employees serving in the same class of position in the agency. The order of separation due to reduction-in-force shall be based upon service ratings and seniority, under a formula to be formally established by the Director of Personnel and approved by the Commission, and all such separations shall be reported to the Director. For re-employment purposes, the Director shall establish a list of employees laid off in accordance with the above provisions, giving due consideration to performance records and seniority in service in compiling said list.

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

Section 13. Separations, Tenure and Reinstatement (Cont'd)

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. 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 West Virginia Civil Service System, or a comparable system of personnel administration existing in the agency prior to the agency's affiliation with the Civil Service System, 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 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 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 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 Civil Service Agencies and who returns to the Agency may be granted all within-grade salary adjustments and advancements he would have received had he remained in active status in the State service, and he shall be credited with all annual, 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 rank on the register shall be determined by his final earned examination rating.

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

Section 13. Separations, Tenure and Reinstatement (Cont'd)

1. The person petitioning such reinstatement shall make his request of 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 Civil Service Rules: Section 7.04, Section 8.03, or Section 9.02.

Section 14. Appeals

14.01. Appeal from Dismissal, Suspension, Demotion, Discrimination

(a) Right of Appeal-Upon the occurrence of any one of the following events, a permanent employee shall have the right to appeal to the Commission for relief from the action complained of: dismissal; suspension for more than thirty (30) calendar days in any twelve (12) month period; demotion; discrimination in any incident of employment involving a personnel action because of political or religious opinions or affiliations, race, sex, age, handicap, national origin or other non-merit based personnel action.

(b) Written Appeal-Such appeal shall be in writing and must be postmarked no later than thirty (30) calendar days after the effective date of the action. An employee must provide in the appeal request substantial factual information including a specific recitation of the alleged act or acts about which the employee-appellant is complaining. The appeal shall be transmitted to the Director who shall docket the appeal request. If the Commission decides to hold a hearing on an appeal, the Director shall set a formal hearing before the Commission within ninety (90) calendar days after receipt of the appeal. In advance of the hearing, the Director shall furnish a copy of the appeal to the appointing authority of the agency concerned.

(c) Notice of Hearing-Both the employee and the appointing authority of the agency involved shall receive reasonable advance notification of the time and place of the hearing.

(d) Discovery-A broad form of discovery exists to simplify conduct of the Commission hearings. Both the appointing authority and the aggrieved employee-appellant shall have the right to inquire and receive answers from the other party or other persons concerning evidence relevant to the issues at the hearing. Both may inspect any documents or other evidence in the possession of the other party or other persons concerning evidence relevant to the issues at the hearing. Only matters which are part of the attorney work product or are otherwise privileged by law are exempted from the requirements of this section. The intent of this section is to allow discovery of facts in a manner similar to the West Virginia Rules of Civil Procedure including, but not limited to, use of interrogatories, depositions, requests for admissions, and requests for production of documents. The scope of discovery shall not be limited by the West Virginia Rules of Civil Procedure.

(e) Stipulations-Ten (10) calendar days prior to the Commission hearing, both the appointing authority and the employee-appellant shall submit to the Commission a signed joint stipulation setting forth the following:

1. issues to be decided;

2. statement of undisputed facts, including facts to which each witness will testify;

3. statement of disputed facts, including facts to which each witness will testify;

Section 14. Appeals (Cont'd)

4. applicable laws; and,

5. exhibits to be introduced, with or without objection.

(f) Failure of either party to comply with this section may result in an adverse decision by the Commission on the merits of the case. It will be discretionary with the Commission to waive the signed joint stipulation requirement. The parties may enter into any other stipulations helpful to the Commission.

(g) Hearing-The employee and an agency official designated by the appointing authority shall have the right to present witnesses and give evidence before the Commission. Technical rules of evidence shall not apply at the hearing of such appeals. At any such hearing, the appointing authority shall bear the burden of going forward with evidence to establish that the dismissal, demotion, suspension, or other non-merit based personnel action was not arbitrary or capricious and was for good cause. The appointing authority also bears the burden of persuasion and such burden shall remain with the appointing authority throughout every stage of such hearing.

(h) Continuance-Continuances of a hearing may be granted by the Commission only for good cause shown.

14.02. Decision

(a) Within thirty (30) calendar days after the hearing, the Commission shall report its decision in writing to the appointing authority and the employee. If the Commission finds that the action complained of was taken by the appointing authority without good cause, the employee shall be reinstated to his or her former position or a position of like status and pay without loss of pay for the period of the dismissal, suspension, demotion, denial of procedural due process rights or other non-merit based personnel action and shall be awarded his reasonable and necessary attorney fees expended therein, such fees to be paid by the appointing authority. If the Commission finds that the action complained of and taken by the appointing authority was too severe but was with good cause, the Commission may provide for such other remedy or remedies as may be deemed appropriate and in the best interest of the parties.

(b) In all cases, the Commission shall have the express authority by order to provide for such remedies as it may deem appropriate after it has made a complete review of the circumstances of each individual case. Such remedies shall include, but not be limited to, the restoration of the suspension, or reinstatement of an individual to his former position or a position of like status and pay, or re-employment to any other position which the Commission judges to be in the best interest of the parties, or any combination of such remedies. When any employee is dismissed and not reinstated after such appeal, the Commission at its discretion may direct that the employee's name be placed on an appropriate re-employment list for employment in any position other than the one from which he has been removed.

Section 14. Appeals (Cont'd)

Any final action or decision taken or made hereunder shall be subject to review by the Supreme Court of Appeals if appeal is made within sixty (60) calendar days of the action or decision complained of.

14.03. Appeal for Examination Rejection

(a) Appeal Request-Any applicant whose application for examination has been rejected may appeal to the Commission for reconsideration of his qualifications. The Commission 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 decision of the Commission in writing to the applicant. The Commission 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 Commission 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.

14.04. Appeal of a Classification Action

(a) Appeal Request-When a classification action results in the movement of a position from one class to another, the affected employee or the appointing authority may, within fifteen (15) calendar days following the date the classification notice was postmarked, request a classification review. The request shall be in writing and shall concern only the allocation of the individual position to a class.

(b) First Review-The Classification Division shall review the initial request and all additional information submitted by the employee or the appointing authority within fifteen (15) calendar days from the date the classification notice was postmarked. The Classification Division shall notify the employee and appointing authority in writing of the result of the classification review.

(c) Second Review-If the decision resulting from the first review remains unacceptable, the employee or the appointing authority may file a written appeal to the Director of Personnel within fifteen (15) calendar days following the date the written decision was postmarked. Such appeal request shall include justification for changing the classification of the position.

(d) Decision-The Director shall consider all pertinent information and issue a written final allocation decision within thirty (30) calendar days after the appeal is received.

14.05. 14.04. Appeal for Removal from Register

(a) Appeal Request-Any person whose name has been removed from a

Section 14. Appeals (Cont'd)

register allegedly for reasons specified in these Rules may appeal to the Commission 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 Commission 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.

14/00.14.05. Appeal for Denial of Procedural Due Process Rights

(a) Raising Issue-In any case where an employee is suspended from thirty (30) days or less in any twelve month period and was not given a statement of the reasons for the action taken against him and the opportunity to reply by an appointing authority within thirty (30) calendar days thereafter, the employee may raise the issue of a violation of the employee's procedural due process. If the Commission finds that an appointing authority has violated an employee's procedural due process rights, the Commission shall have the authority to provide any remedy it may deem appropriate as more fully set forth under Section 14.02. This section does not preclude consideration by the Commission in an appeal upon a personnel action of any procedural due process issues.

(b) Joint Statement

1. Unless waived by the Commission and at the direction of the Director of Personnel, both the appointing authority and the employee-appellant shall submit to the Commission a written statement of the procedures followed by the appointing authority and the actions taken by both the appointing authority and the employee-appellant regarding the employee's assertion of denial of procedural due process rights. This joint statement is to include (1) a copy of the notice which was given to the employee of the personnel action, (2) the time period within which the employee was required to reply to the notice of personnel action, (3) either a copy of any request by the employee for an opportunity to meet and be heard by the appointing authority or a written statement that such a request was or was not made, (4) a written summary of the meeting held regarding the personnel action, (5) the personnel action taken by the appointing authority, (6) a statement of the consideration given by the appointing authority to any reply by the employee to the notice of personnel action and any matter presented during the meeting held by the appointing authority, if any, (7) a statement of the reason for the personnel action taken by the appointing authority, and (8) a copy of the written decision advising the employee of the personnel action.

2. If the appointing authority fails or refuses to comply with the provisions relating to the joint statement required by Section 14.06(b)1 the Commission may determine that the appointing authority has failed to

Section 14. Appeals (Cont'd)

grant the procedural due process rights to which an employee is entitled. Likewise, the failure or refusal of the employee to comply with the provisions relating to the joint statement required by Section 14.06(b) may result in dismissal of the employee's appeal. For the contents of those portions of the joint statement required by Section 14.06(b) on which the appointing authority and the employee are unable to agree, and for which a specific recitation of the differences and the reason for such differences is set forth in the joint statement, no failure or refusal to comply shall be deemed to have occurred.

3. In those instances in which the joint statement unquestionably demonstrates the denial of an employee's procedural due process right, the Commission may without a hearing provide any remedy as it may deem appropriate as more fully set forth under Section 14.02.

~~14.07.~~ 14.06. Decorum of Parties, Witnesses, Representatives of Parties or Witnesses, and Others-All persons appearing before the Commission in person or by or through a representative shall act in a professional and ethical manner and be subject to disciplinary action by the Commission for improper conduct of any nature. Disciplinary action by the Commission will be determined in light of the conduct of the individual(s) and may include, but is not limited to, dismissal of the party's action or denial of the privilege of a person or his representative to appear before the Commission.

~~14.08.~~ 14.07. Cost and Expenses

(a) All state employees who are subpoenaed or required to attend Civil Service appeal hearings, whether at the request of the department or the appellant, will not be charged annual leave for their absence from their normal duties and shall be paid reasonable expenses in accordance with State Travel Regulations for attending the hearing.

(b) In accordance with Chapter 59, Article I, Section 16 of the West Virginia Code, any witness who is subpoenaed, and who is not an employee of the State, will be entitled to payment of a witness fee and mileage. The party who requests the subpoena to be issued will be responsible for the payment.

(c) The Commission may order the parties to bear costs and expenses necessitated by an appeal in any manner it deems just based on, including but not limited to, the merits of a particular action, the conduct of the parties, and such other factors as are relevant to a determination of the taxing of costs and expenses.

Section 15. Classified-Exempt Service

15.01. Classification Plan for the Classified-Exempt Service-Upon the recommendation of the Director, the Commission 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. Appeals-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 follow the procedure established in Section ~~14.04~~ 5.04 of these Rules.

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, as amended, the following regulations shall apply to classified employees.

16.01. Official Holidays

In accordance with Chapter 2, Article 2, of the West Virginia Code, as amended, official holidays are New Year's Day, Martin Luther King's Birthday, Lincoln's Birthday, Washington's Birthday, Memorial Day, West Virginia Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day, any day in 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.

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 must modify holiday schedules to accommodate around-the-clock shifts or other special needs. Each 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.

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.

Section 16. Attendance and Leave (Cont'd)

Length of Service Category	Accrual Rate	Carry-forward Hours
Less than 5 years of regular employment	.05769 hour per hour paid	240 hours
5 years but less than 10 years of regular employment	.06923 hour per hour paid	240 hours
10 years but less than 15 years of regular employment	.08077 hour per hour paid	280 hours
15 years or more	.09231 hour per hour paid	320 hours

(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 Civil Service.

2. Credit may also be given for other State employment not in a covered Civil Service 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-Civil Service 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. 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 based on the proper length of service category.

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

(f) Death of Employee-Upon the death of an employee who has not used all accrued annual leave, the unused portion shall be paid in such manner as to benefit the employee's estate. Payment shall not be limited to the maximum

Section 16. Attendance and Leave (Cont'd)

carry-forward amount for length of service category and may be paid in lump sum as provided in Section 16.03(g)2 of these rules.

(g) Separation From Employment-An employee who separates from employment for any reason except as described in 16.03(f) of these Rules and Regulations shall be paid for all accrued annual leave not to exceed the maximum carryover hours for the appropriate length of service category. 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 leave payment is due falls before the day on which the pay period ends, separation leave payment for those days within that pay period shall be calculated using the daily rate for the 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 Commission shall be paid according to those standard procedures.

2. Any eligible employee as defined in § 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 annual leave in accordance with this section and Section 16.03(f) of these Rules and Regulations. Separation leave payment for an employee who selects a lump sum payment shall be calculated using the annualized hourly rate of pay established for the class by Civil Service.

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.

(h) Transfer of Annual Leave

1. When a covered employee transfers from one agency to another, all seniority rights 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 employment as defined in Section 16.03(b)2 may be transferable to covered agency employment.

(i) 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 24 hours per

Section 16. Attendance and Leave (Cont'd)

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. 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.

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. 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. Such leave expires at the termination of the period of employment unless immediately followed by an appointment from the register.

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).

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

(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.

2. All Other Separations-All accumulated sick leave shall be cancelled as of the effective date of separation of employment or last day worked

Section 16. Attendance and Leave (Cont'd)

during the notice period. If the employee returns to work within twelve (12) calendar months all lost 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 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(b).

2. Death in the immediate family of the employee-This provision shall be understood to include 3 days; and 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.

6. Illness and/or Routine Dental and Medical Appointments-Immediate Family-Absence for illness or routine dental or medical appointments in an employee's immediate family may be charged to accrued sick leave, not to exceed 24 hours per calendar year.

(g) Physician's Statement

1. 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. In the absence of the physician's statement, annual leave shall be charged for the entire period. 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.

Section 16. Attendance and Leave (Cont'd)

2. 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.

(h) Transfer of Sick Leave

1. When a covered 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 employment as defined in Section 16.03(b)2 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, the appointing authority may request appropriate substantiation of the employee's claim for leave, for example, verification of illness of less than three days.

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 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 when the employee fails to notify the appointing authority, according to agency policy, of the reason for absence. Such action must be transmitted 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 Minimum Wage and Maximum Hour Standards Employee Law, Chapter 21, Article 5C, West Virginia Code, as amended, and the West Virginia Department of Labor Administrative Regulations.

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

Section 16. Attendance and Leave (Cont'd)

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 employees for leaves of absence shall not be construed as time served in completing the probationary period. This section shall not be construed to extend the provisional period limitation.

(b) 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 makes application (1) no later than fifteen (15) calendar days following the expiration of all sick leave and compensatory time or (2) no later than fifteen (15) calendar days following the date on which the employee filed a claim for Workmen'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.

(c) 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 leave of absence without pay was granted for 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 written and are subject to review and renewal every thirty (30) calendar days. Such review may include the requirement of additional certification by a physician. Failure of the employee to report promptly at the expiration of a leave of

Section 16. Attendance and Leave (Cont'd)

absence without pay, except for satisfactory reasons submitted in advance to the appointing authority, shall be cause for dismissal.

(d) 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. Military Leave

(a) All employees 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 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, 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 military leave above referred to.

(b) Any employee 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 by federal statute, rule, or regulation regarding return to employment, the employee shall have the right to reassume 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 Civil Service Rules and Regulations. Employees shall be credited with all annual leave, 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 Regulations. This paragraph shall not be construed:

(c) 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 existed.

(d) 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.

Section 16. Attendance and Leave (Cont'd)

(e) To the extent that any portion of this section is inconsistent with or conflicts with the requirements of any applicable federal statute, rule, or regulation regarding military leave or re-employment rights, the 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.

16.10. Court, Jury, and Hearing Leave

(a) Upon application in writing, an employee 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.

(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.

16.11. Education Leave

(a) Subsidized by Agency-An agency subsidizing advanced educational training for state 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, annual leave, or compensatory time, nor shall such employees be eligible for salary advancements.

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

16.12. Supplementary Attendance and Leave Regulations-Each agency shall prepare supplementary regulations as may be required. Copies of all such regulations shall be filed with the Director of Personnel.

16.13. 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.

16.14. Leave Records-Each agency shall maintain a current leave record of its employees' accrued and used leave. Each employee shall have access to his or her leave records subject to the appropriate agency's established rules and regulations.

Section 17. Service Ratings

The Director of Personnel, after consultation with the appointing authorities, and with the approval of the Commission, shall establish and make effective a system of service ratings designed to give a fair evaluation of the quality and quantity of work performed. Insofar as practicable the system of service ratings in the classified service shall be uniform. Such ratings shall be prepared and recorded for all permanent and provisional employees at regular intervals not to exceed twelve months. Service ratings shall be considered in determining salary advancements and in making promotions, demotions, and dismissals, and in determining the order of separations due to reduction in force. An employee shall be notified of his service rating in writing by the Personnel Officer 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 Commission 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 interferring 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 of 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, as amended. Other types of partisan or nonpartisan political campaigning and management not inconsistent with the provisions of this subdivision and with the provisions of subsection (d) of this section, shall be permitted.

Section 18. Political Activities (Cont'd)

(e) 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.

(f) 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 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 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 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. 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 Commission.

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 liable to the appealing employee for any salary due from the time of the final order of reinstatement by the Commission.

(c) 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, and such other personnel information as may be considered pertinent. All personnel records shall be open to the inspection of the Commission.

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, all state officers and employees shall comply with and aid in all proper ways in carrying out the provisions of Article 6, the rules, regulations, and orders thereunder. All officers and employees shall furnish any records or information which the Director or the Commission may request for any purpose of Article 6.

22.02. Legal Proceedings to Secure Compliance-Pursuant to Chapter 29, Article 6, Section 12 of the Code, 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 Civil Service Commission adopts as its policy by reference thereto the provisions of Chapter 29, Article 6, Section 22(b) and will enforce the policy accordingly.

Section 23. Grievance Procedure

23.01. Grievance Procedure

(a) General Application-Except as provided in paragraphs (b) and (c) of this section, this Section applies to any matter which is subject to the control of agency management and which is of concern or dissatisfaction to an employee.

(b) Exceptions-This section does not apply to:

1. A matter subject to final administrative review outside the agency.

2. The content of published agency policy such as the mission of an agency, its budget, its organization, and assignment of personnel (other than the grievant).

3. Any action by an agency due to a Federal or State law, Civil Service law and/or regulation as well as directives from the Governor's Office.

4. Denial of a recommendation for, or disapproval of, a merit salary increase, performance award, or other kind of honorary or discretionary award.

(c) Appeals-The following events, actions, and circumstances are directly appealable to the Civil Service System and are not subject to the Grievance Procedure.

-- examination rejection
-- examination rating
-- removal from register
-- alleged discriminatory action in recruitment, examination, appointment, training, retention, discipline, or any other personnel action because of political or religious opinions or affiliations or because of race, national origin, or any other non-merit factors
-- alleged discriminatory action on the basis of age, sex, or physical disability when specific age, sex, or physical requirements do not constitute a bonafide occupational qualification
-- dismissal
-- suspension for more than thirty (30) calendar days in any twelve (12) month period
-- demotion and transfer-demotion of a permanent employee.

23.02. Purpose of Grievance-By providing a channel for appeal, a grievance procedure guarantees all employees a "fair shake" whenever there is a possibility of improper discipline or unfair treatment. The grievance procedure aims at creating a higher level of morale for the employee and increases his sense of well-being in his work situation. Ideally, the intent is to create for all employees greater job satisfaction and greater confidence in fair treatment and to provide a legitimate outlet for employee "gripes". It is believed that a fair grievance procedure will improve the quality of communication and performance in any organization.

Section 23. Grievance Procedure (Cont'd)

23.03. Who May File a Grievance-A grievance process must move upward in the chain of command. An employee may file a grievance with or against his supervisor, the supervisor with or against his chief, the chief with or against the assistant director or director, the director against the administrative officer. However, a supervisor may not file against a subordinate since the authority vested in his position permits corrective action.

23.04. Employee Representative-At all steps of the agency grievance procedure, the employee has the right, but shall not be required, to be represented by one individual of his choice. The agency may, if it desires, establish counselors to represent the employee and help solve disputes at the local level. The aggrieved employee may use this counselor if he desires or may choose to be represented by himself or another individual.

23.05. General Provisions

(a) Conflicts of Policy-The provisions of this Section shall be controlling in cases of conflict and shall supersede any past or present agency practice, policy, or procedure.

(b) Appeal Rights-Nothing herein shall be so construed as to deprive a classified employee of the right of appeal to the Director of Personnel or the Commission in appropriate cases, or to alter or extend the time within which an appeal is required to be filed with the Commission, or to alter in any way the rules of the Commission.

(c) Reprisals-Any supervisor who takes reprisal action of any kind against any employee who makes use of this Grievance Procedure shall be subject to administrative disciplinary action.

(d) Improper Influence-Any agency employee who uses his official position to coerce, attempt to coerce, or influence in any improper manner any member of a Hearing Board or witness shall be subject to administrative disciplinary action.

(e) Adverse Party-When a grievance hearing is conducted at any step under this procedure, the party against whom the grievance complaint is made shall have the right to appear and testify at the hearing.

(f) Exclusive Remedy-All agency employees shall use this Grievance Procedure for matters covered in Section 23.01.

(g) Paid Time-Off-An employee selected by a grievant to represent him in the processing of a grievance through this procedure shall be granted necessary time-off during his working hours to represent such other employee without loss of pay and without charge to annual or compensatory leave credits. Likewise, the grievant shall be granted time-off with no loss of pay and benefits. An employee may have the assistance of one other person in the preparation and presentation of the grievance. At the request of the

Section 23. Grievance Procedure (Cont'd)

grievant, such person may be present at any step of the procedure. In addition to actual time spent in grievance presentation at the first, second and third steps, the employee representative shall be granted time-off during his working hours, not to exceed four (4) hours per grievance, for the preparation of such grievance without loss of pay and without charge to annual leave or compensatory leave. Likewise, the grievant shall be granted time-off during his working hours, not to exceed four (4) hours per grievance, with no loss of pay and benefits. However, it shall be understood by all parties that the first responsibility of any State employee is the work assigned by the appointing authority to the employee. Grievance preparation and representation activities by an employee shall not seriously affect the overall productivity of the employee.

(h) Distribution of Grievance Procedure-The appointing authority shall furnish to each employee a copy of the currently approved Grievance Procedure.

(i) Informality-Meetings and hearings held between employee and employer at any step of the agency Grievance Procedure shall be conducted in an informal manner, and the technical rules of evidence shall not apply. Every effort should be made to maintain an informal, relaxed atmosphere in which an amicable resolution of the grievance may be more readily achieved.

23.06. Processing the Grievance

(a) First Step-(Discussion with Immediate Supervisor)-All grievances shall be presented within five (5) working days from the date the grievant first becomes aware of, or should have become aware of, the cause of such grievance. Where the cause of the grievance is of an ongoing or continuing nature, the grievance shall be presented within five (5) working days of the last occurrence of the cause of grievance. The aggrieved employee should present his grievance verbally to his immediate supervisor, and if possible, the grievance should be settled through discussion. The supervisor must give his verbal reply to the aggrieved employee within three (3) working days after the grievant presents his grievance.

(b) Second Step-(Section, Division, or Unit Head)-If the employee is not satisfied with the reply at the First Step or if the response is not rendered within the prescribed time limit, the employee must write the grievance and submit it to his immediate supervisor within five (5) working days. The five (5) working days shall commence from and exclude the date of the supervisor's First Step answer or the prescribed day in which the answer was due. The immediate supervisor must forward the written grievance along with a summary of the verbal response to the appropriate local section, division, or unit head, and the Director. The local section, division, or unit head shall investigate the grievance and afford the employee an opportunity to present his viewpoint during an informal hearing. Unless the relief sought by the grievant has been granted, the hearing shall not be held until at least ten (10) working days after the immediate supervisor's verbal First Step answer. The hearing must be completed and the employee given a written statement of the

Section 23. Grievance Procedure (Cont'd)

findings and recommendation of the local section, division, or unit head within fifteen (15) working days after the receipt of the immediate supervisor's verbal First Step answer. The employee shall have the right, but shall not be required, to be represented by an individual of his choice during this step of the procedure.

(c) Third Step-Hearing Board

1. Generally-In the event that the decision of the section, division, or unit head does not satisfy the employee or a decision was not rendered within the prescribed time limits, the employee may present the grievance in writing to a Hearing Board within five (5) working days of his receipt of the Second Step written findings or the prescribed day on which such written findings were due. Presentation of the grievance to the Hearing Board is accomplished by the employee's serving within the five (5) day period a written request to convene the Hearing Board upon the local section, division, or unit head and a copy thereof upon the Director.

The Hearing Board shall consist of three (3) members. One member shall be designated by the agency head and one member shall be designated by the aggrieved employee. The third member shall be appointed by the other board members and shall be the chairperson of the Board. The chairperson shall conduct the hearing and prepare the decision of the Board.

After holding the hearing, the Board shall issue a written decision notifying all parties of its decision. The hearing must be held and the decision issued within fifteen (15) working days following the date of service of the grievance in this Step. The aggrieved employee shall have the right, but shall not be required, to be represented by an individual of his choice during this step of the procedure.

2. Summary Disposition-At the time after the filing of a grievance in the Third Step, the Hearing Board may summarily dispose of the grievance on any of the following grounds:

a. The aggrieved employee has no legal right to grievance consideration.

b. The appointing authority lacks jurisdiction of the subject matter or of the person against whom relief is sought.

c. The grievance has not been made in the required manner or within the prescribed period of time.

d. The aggrieved employee has failed to appear at the time and place fixed for the grievance hearing.

e. The aggrieved employee has withdrawn or abandoned the request for grievance consideration.

Section 23. Grievance Procedure (Cont'd)

When the Hearing Board summarily disposes of a written grievance, it shall notify all interested parties in writing.

3. Employee-members-An employee designated as a member of a Hearing Board shall be granted necessary time off during his working hours, without loss of pay and without charge to annual or compensatory leave credits, to prepare for and hear appeals and prepare findings.

4. Notice of Hearing-The aggrieved employee shall be given notice at least five (5) calendar days in advance of the hearing, provided that by consent of the Hearing Board and the aggrieved employee, such notice and delay may be waived.

5. Time and Place of Hearing-The place of the grievance hearing shall be specified by the Hearing Board and shall be in a convenient place accessible to the aggrieved employee. All such hearings shall be held on the employer's premises or on other premises mutually agreeable to the parties and within regular working hours, provided that any such hearing might continue beyond normal working hours.

6. Procedures Before Hearing Board

a. The aggrieved employee, employing agency, and representatives of both shall have the right to call, examine, and cross-examine witnesses who are employees of the agency against which the grievance is lodged and who have knowledge of the facts at issue.

b. Both parties may produce witnesses other than employees of the agency against which the grievance is lodged, and such witnesses shall be subject to examination and cross-examination.

c. Reasonable and necessary travel expenses of material witnesses called under sub-section (a) above shall be paid by the agency.

d. The aggrieved employee shall have the right to require the production of books, papers, records, and other items pertinent to the facts at issue which are within the control of the agency against which the grievance is lodged and which are not held to be confidential or privileged by law.

e. The aggrieved employee shall have the right, but shall not be required, to be represented by an individual of his choice.

f. Affidavits and ex-parte statements offered during the course of a grievance hearing may be received and considered by the Hearing Board.

g. The Hearing Board shall have the right to offer examination and cross-examination of any witness and to conduct the hearing in a reasonable and orderly manner.

Section 23. Grievance Procedure (Cont'd)

h. The Hearing Board shall have the right to limit corroborative evidence.

i. When a pending case involves substantially the same question of law or fact as presented in a prior case, the Hearing Board may consider any part of the record in such previous case as it may deem relevant, provided that in the application of this provision, no party shall be deprived of the right to cross-examine any witness.

j. The Hearing Board may order that the witnesses in any hearing be separated so as to preclude any witness, other than the parties and their representatives, from hearing the testimony of any other witness.

k. When two or more grievance petitions involve similar or related circumstances, the Hearing Board may order a joint hearing of any or all the matters at issue or may order that all such petitions be consolidated.

l. Any officer or employee required to testify shall not be subjected to any disciplinary action by his appointing authority because he testifies, but may be held accountable for actions on his part revealed by his testimony.

7. The written decision of the Hearing Board shall be binding upon all parties, pending review by the Commission, and shall specify the precise remedy to be taken. The Hearing Board has the remedial power to order that the employee be made whole and the cause of the grievance be remedied. The written decision shall contain a statement of the issues presented, a statement of facts including a summary of the testimony of each witness, the opinions of the Hearing Board members including assessments of the credibility of witness, and the decision and remedy.

23.07. Review by Commission-Immediately upon issuance of the Hearing Board's written decision, the Board shall send a copy of that decision to the Commission for its review. The Commission, at its discretion, may order a hearing on the subject of the grievance. Whether or not the hearing is held, the Commission has the power to affirm, reverse, or modify the decision of the Hearing Board. If the Commission declines to order a hearing of the grievance, the Commission's decision about the grievance must be issued within forty-five (45) calendar days after the Commission's receipt of the Hearing Board's decision. If the Commission orders a hearing of the grievance, the Commission's decision about the grievance must issue as does any other appeal.

23.08. Forms-The Director of Personnel shall prescribe a uniform grievance form to be used and distributed by all agencies covered by the Civil Service System. The Director is authorized and empowered to require that every appointing authority and his agents have ample supplies of the grievance procedure and forms to be readily available to employees.

Section 23. Grievance Procedure (Cont'd)

The official Grievance Procedure Form, Standard Form CS-G-1, shall be printed in triplicate. The original copy shall be retained by the employee for personal use. The second copy shall be forwarded to the agency involved and shall be maintained by the agency in an administrative file. The third copy shall be filed with the Civil Service Commission. This grievance procedure form will be used for recording the employee's grievance and the action taken by officials at appropriate steps.

Section 24. Training

24.01. Training-Each agency is responsible for providing training to employees of the agency based upon the agency's needs and resources and the employee's needs and capability. Selection of employees for training shall ensure equal opportunity and shall not discriminate on the basis of race, sex, age, religion, national origin, political affiliation, handicap or any other non-job related factors. The Director of Personnel shall make available to the agencies technical assistance in the areas of training needs assessment, locating training materials and resources, course development, training techniques, training evaluation and coordination of training between the agencies.

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

(b) General Courses-The Director shall make available to the agencies training in knowledge, skills and abilities which are applicable broadly in many classifications in all agencies. Employee selection for the courses shall be consistent with established agency and Civil Service 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 § 29-6-17b of the West Virginia Code, as amended, regarding the achievements and deficiencies of the apprenticeship program.

Section 25. Amendments

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

APPENDIX A

REDUCTION-IN-FORCE FORMULA

In compliance with Chapter 29, Article VI, Section 8 (10) of the Code of West Virginia, the following reduction in force regulations shall apply to employees covered by the Civil Service System.

In the event of a reduction of force in any agency covered by the Civil Service System, all emergency, intermittent,* temporary, provisional, and probationary employees shall be separated before any permanent employees of the same class are separated. Permanent employees shall be separated by class in the manner hereinafter described.

1. Service ratings for separation purposes shall be computed for all permanent employees (hereinafter referred to as employees) in position classes in which reductions are to be effected in accordance with the following subparagraphs. Employees in position classes above the lowest one of a promotional series and who have been in such classes for insufficient time to have earned three service ratings shall be offered the option of demotion. Once this option is exercised, however, such employees shall be subject to the application of the following subparagraphs to the lower positions. In no case shall more than three service ratings, including a special one, be used in determining the rating for purposes of separation.

   (a) For an employee who has served in a position class long enough to have earned three or more service ratings in the class, the rating for separation purposes shall be computed by dividing the sum of the last three ratings by three.

   (b) For an employee who has served in a position class long enough to have earned two regular service ratings, but not three, a special rating may be assigned, provided it has been at least three months since the date of the last regular service rating, and provided such a rating is assigned to all others in the position class who are in a like situation. If a special rating is assigned, his rating for separation purposes shall be determined by dividing by three the sum of the two regular service ratings plus the special rating. If such a rating is not assigned, his rating for separation purposes shall be computed by dividing the sum of the two regular service ratings by three.

   (c) For an employee who has served in a position class long enough to have attained one but not two regular service ratings in the class, a special rating may be assigned, provided it has been at least three months since the date of the last regular service rating and

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*Intermittent as used herein means a person employed on a non-permanent or part-time basis in any class. This does not preclude the interpretation that "Intermittent Claims Clerk-Typist" and "Intermittent Claims Clerk" are classes in themselves.

provided such a rating is assigned to all others in the position class who are in a like situation. If a special rating is assigned, his rating for separation purposes shall then be computed by dividing by three the sum of the regular service rating and the special one. If a special rating is not assigned, his rating for separation purposes shall be determined by dividing the one regular service rating by three.

(d) For an employee who has served in a position class for a period of time insufficient to have earned one regular service rating, a special rating may be assigned. His rating for purposes of separation shall be that rating divided by three.

(e) Service ratings are, and shall be assigned values according to the following scale:

Excellent .....10 points
Very Good ..... 6 points
Good ..... 4 points
Fair ..... 2 points
Unsatisfactory ..... 0 points

2. In determining the final order of separation, one-sixth point per month, or major fraction thereof, shall be added to the employee's separation service rating for each month of service with the Agency or any other agency under the Civil Service System. Employees shall then be ranked according to final separation rating and separated according to that rank. (See example as follows:)

EXAMPLE

Name	Average Service Rating	Years of Service	Class Title Seniority Score	Separation Rating	Order of Separation
John Doe	4	6	12	16	3
Richard Roe	6	3	6	12	1
Winnie Woo	10	2	4	14	2

3. In the event of a tie on the separation rating, the employee with the highest most recent service rating shall be given preference unless one of the employees is a veteran and the other not, in which case the veteran shall be given preference. If a tie still exists, the employee having the highest examination score for the same position shall remain. If a tie still exists, the appointing authority or his representative and those individuals who are tied shall agree on a satisfactory means of breaking the tie.

4. In computing length of service, all service in any Civil Service agency except emergency and intermittent shall be included. Time spent on leave of absence without pay shall not be included, but educational and

military leave shall be included. If a person works with an agency in any capacity except as an emergency or intermittent employee at two or more periods, all periods of work shall be included, but the intervening times shall not be considered as service with the agency. Seniority shall be measured by the length of time with the agency, and not the length of time in any particular capacity.

5. The separation formula shall be applied on a divisional basis for all positions. For the purpose of applying this formula, the divisions of the agency shall be designated by the appointing authority subject to the approval of the Director of Civil Service, and a list of such divisions shall be filed by each appointing authority for their respective agencies with the Director of Civil Service.

APPENDIX B

EXEMPT SERVICE

The classified service consists of all positions in the following departments and agencies except those here designated as exempt:

A. COMMISSION ON AGING

1. The Commission on Aging
2. Director
3. One private secretary
4. Policymaking position:

   (a) Director of the Golden Mountaineer Discount Program

5. Members of advisory boards and committees who serve in a non-executive capacity
6. State and local officials serving ex officio and performing incidental administrative duties or acting in advisory capacity
7. Part-time professional personnel engaged in professional services without administrative duties and personnel employed for less than ninety (90) working days a year
8. All part-time project personnel
9. Foster Grandparents

B. DEPARTMENT OF AGRICULTURE - Division of Forestry

1. Division Director
2. Aide
3. Patroller
4. Observer
5. Agriculture Administrator
6. Entomological Analyst
7. Environmental Program Specialist

C. ALCOHOL BEVERAGE CONTROL COMMISSION

1. Commissioner
2. One private secretary
3. One principal assistant or deputy
4. Policymaking positions:

   (a) Assistant Commissioner of Marketing, Operations and Sales
   (b) Director of the Enforcement Division
   (c) Division Director of the Licensing Division
   (d) Assistant Commissioner of Accounting and Administration
   (e) Director, Stores Division
   (f) Special Investigators - (2)

5. West Virginia Alcoholic Beverage Control Licensing Advisory Board
6. Part-time professional personnel engaged in professional services without administrative duties and personnel employed for less than ninety (90) working days a year
7. Secretary to the Private Licensing Club Board

D. DEPARTMENT OF BANKING

1. Commissioner
2. One private secretary
3. One principal assistant or deputy
4. Confidential secretary to the Deputy Commissioner
5. Policymaking position:

   (a) Special Assistant - Banking

6. Part-time professional personnel engaged in professional services without administrative duties and personnel employee for less than ninety (90) working days a year

E. CIVIL SERVICE SYSTEM

1. Members of the Civil Service Commission
2. Members of oral interviewing boards
3. One private secretary
4. Receptionists for oral interviewing boards
5. Monitors and janitors for examination centers
6. Part-time professional personnel engaged in professional services without administrative duties and personnel employed for less than ninety (90) working days a year
7. Part-time help paid on an hourly basis for extra work directly connected with examination series

F. DEPARTMENT OF COMMERCE

1. Commissioner
2. One private secretary
3. Deputy Commissioner
4. Director, Division of Tourism
5. Director, Division of Advertising and Promotion
6. Director, Division of Product Marketing
7. Director, Division of Parks and Recreation
8. Resident caretakers not supervising employees of the classified services
9. Part-time professional personnel engaged in professional services without administrative duties and personnel employed for less than 90 working days a year
10. Persons employed in a professional or scientific capacity to make or conduct a temporary special inquiry, investigations, or examinations on behalf of the Legislature, or a committee thereof, an executive department or by the authority of the Governor.
11. Weeder, Observer, Cabin Cleaner, Maid, and Patrolman
12. Professional personnel engaged in conducting research of demonstration projects of not more than one year's duration
13. Aide
14. Hourly employees working on short-term construction projects
15. Seasonal hourly employees not to exceed 130 working days per calendar year

G. DEPARTMENT OF CORRECTIONS

1. Commissioner
2. Commissioner's secretary
3. One principal assistant or deputy
4. Part-time professional personnel engaged in professional services without administrative duties and personnel employed for less than ninety (90) working days a year
5. Members of the Board of Probations and Parole
6. Part-time inmate and patient help
7. Policymaking positions:

   (a) Director of Administration
   (b) Director of Corrections Management
   (c) Institutional Superintendents for:

      Anthony Center
      Davis Center
      Industrial Home for Youth
      West Virginia Penitentiary
      Huttonsville Correctional Center

   (d) Director, Prison Industries
   (e) Director, Education Services

H. DEPARTMENT OF CULTURE AND HISTORY

1. Executive Director
2. One private secretary
3. Policymaking positions:

   (a) Director, Division of Archives and History
   (b) Director, Division of Historic Preservation
   (c) Director, Division of Arts and Humanities
   (d) Director of the Culture Center
   (e) Director of Camp Washington Carver
   (f) Director of West Virginia Independence Hall
   (g) Assistant Commissioner for Administration
   (h) Assistant Commissioner for Programming and Policy

4. Part-time professional personnel engaged in professional services without administrative duties and personnel employed for less than ninety (90) working days a year

I. OFFICE OF EMERGENCY SERVICES AND INCLUDING CERTAIN LOCAL UNITS

1. Director
2. Local emergency services directors
3. State and local emergency services boards
4. State and local offices serving ex officio and performing incidental administrative duties or acting in an advisory capacity
5. Personnel employed for less than ninety (90) working days a year

J. DEPARTMENT OF EMPLOYMENT SECURITY

1. Commissioner
2. One private secretary
3. One principal assistant or deputy
4. Members of Board of Review
5. Secretaries of the Board of Review
6. Members of advisory councils
7. State and local officials serving ex officio and performing incidental administrative duties or acting in an advisory capacity
8. Attorneys serving as legal counsel
9. Personnel employed for less than ninety (90) working days a year

K. DEPARTMENT OF ENERGY

1. Commissioner
2. One private secretary
3. Personal assistant to the Commissioner
4. Deputy Commissioner
5. One private secretary to Deputy Commissioner
6. Policymaking position:

   (a) Seven (7) Regional Energy Administrators

7. Director, Division of Mines and Minerals
8. Director, Division of Oil and Gas
9. (2) Deputy Directors, Permit Section
10. (2) Deputy Directors, Inspection and Enforcement
11. (2) Deputy Director, Safety, Health and Training
12. Mine Inspectors
13. Mine Safety Instructors
14. Health and Safety Administrator
15. Mine Foreman Examiners
16. Personnel employed for less than ninety (90) working days a year
17. Reclamation Board of Review
18. Board of Appeals
19. Board of Coal Mine Health and Safety
20. Shallow Gas Well Review Board
21. Board of Miner Training, Education and Certification
22. Mine Inspectors Examining Board
23. Oil and Gas Inspector Examining Board
24. Oil and Gas Conservation Commission
25. Oil and Gas Inspectors
26. Director, Division of Abandoned Lands and Reclamation
27. Director, Division of Health, Safety and Training

L. DEPARTMENT OF FINANCE AND ADMINISTRATION

1. Commissioner
2. One private secretary
3. One principal assistant or deputy
4. Policymaking positions:

   (a) Two (2) Deputy Commissioners
   (b) Assistant to the Commissioner (Research)

(c) Director, General Services
(d) Travel Management Coordinator

5. Part-time professional personnel engaged in professional services without administrative duties and personnel employed for less than ninety (90) working days a year

M. FIRE COMMISSION

1. Eleven members of State Fire Commission
2. Fire Administrator
3. One principal assistant or deputy
4. One private secretary
5. Part-time professional personnel engaged in professional services without administrative duties and personnel employed for less than ninety (90) working days a year

N. GOVERNOR'S OFFICE OF COMMUNITY AND INDUSTRIAL DEVELOPMENT

1. Director
2. One private secretary
3. One principal assistant or deputy
4. Director, Division of Community Development
5. Director, Division of Financial and Technical Assistance
6. Director, Division of Administration
7. Director, Division of Industrial Development
8. Director, Division of Research and Strategic Planning
9. Director, Division of Employment and Training
10. Director, Division of Small Business Development
11. Director, Division of Small Business
12. Policymaking positions:

(a) Special Assistant
(b) Project Manager
(c) Legal Analyst
(d) Special Assistant - Strategic Planning
(e) Four (4) Regional Community Development Coordinators
(f) Director of Labor Management Council
(g) Assistant Director Labor Management Council
(h) Deputy Director of Operations (WVEDA)

13. Part-time professional personnel engaged in professional services without administrative duties and personnel employed for less than ninety (90) working days a year
14. West Virginia Export Development Authority
15. West Virginia Automobile Assistance Corporation
16. Labor Management Council
17. West Virginia Industrial and Trade Jobs Development Corporation
18. Public Energy Authority
19. Linked Deposit Jobs Program
20. West Virginia Economic Development Authority

0. DEPARTMENT OF HEALTH (Including all County Health Departments)

1. The state Director of Health
2. One private secretary
3. One principal assistant or deputy
4. Policymaking positions:

   (a) Director, Office of Administration and Oversight
   (b) Director, Office of Behavioral Health Services
   (c) Director, Office of Community Health Services
   (d) Director, Office of Environmental Health Services
   (e) Director, Office of Health Planning and Evaluation
   (f) Office of Chief Medical Examiner
   (g) Hospital Administrator I - Hospital Administrator II

Hospital Administrator I	Hospital Administrator II
Andrew S. Rowan	Colin Anderson
Denmar	Huntington State Hospital
Greenbrier Center	Spencer Hospital
Hopemont Hospital	Weston Hospital
Lakin Hospital	Hartley Plan Monitor
Marion Health Care Hospital	Monitor's Secretary
Pinecrest Hospital	Hartley Plan Assistant Monitor
Welch Emergency Hospital	

   (h) Administrator, Public Health Region
   (i) Deputy Director
   (j) Special Assistant - Health Facilities (4)
   (k) Special Assistant - Special Projects

5. Members of the State Board of Health
6. Members of Advisory Committee
7. Members of local boards of health
8. State and local officials serving ex officio and performing incidental administrative duties or acting in an advisory capacity
9. Part-time professional health; and related part-time health personnel employed for less than ninety (90) working days a year
10. Seasonal employees on the fly and mosquito part of the Vector Control Program in the Kanawha-Charleston Health Department from May 15 through October 15, yearly
11. Graduates of medical schools serving residencies or internships
12. Prisoner help and patient help in mental institutions
13. Part-time professional personnel engaged in professional services without administrative duties and personnel employed for less than ninety (90) working days a year
14. All individuals employed under the Foster Grandparent Federal Project paid on an hourly basis
15. Personnel employed for less than ninety (90) working days a year except in the following programs:

   (a) Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation; Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (Title III)
   (b) Maternal and Child Health Services, Social Security Act, (Title V)
   (c) National Health Planning and Resources Development Public Health Service Act, (Title XV)

(d) Health Insurance for the Aged (Medicare), Social Security Act, (Title XVIII)
(e) Medical Assistance (Medicaid), Social Security Act, (Title XIX)
(f) Grants to State for Social Services, Social Security Act, (Title XX)
(g) Drug Abuse Prevention, Drug Abuse Office and Treatment Act of 1972
(h) Developmental Disabilities Services and Facilities Construction Act as amended by Public Law 95-602

16. State Superintendent of Schools, the Director of Health, the Commissioner of Corrections, the Commissioner of Human Services, the Director of the Division of Rehabilitation Services, and the Commissioner of the Department of Employment Security
17. Members of Developmental Disabilities Council which consists of twenty-seven (27) members in Commission on Mental Retardation
18. Students work and training under Commission in Mental Retardation
19. Special project consultants, 120 work days (full or part-time) - Commission on Mental Retardation
20. Executive Director, West Virginia Board of Medicine

P. HEALTH CARE COST REVIEW AUTHORITY

1. Board members
2. One principal deputy
3. One private secretary
4. Policymaking positions:

(a) Chief Financial Analyst
(b) General Counsel

5. Part-time professional personnel engaged in professional services without administrative duties

Q. DEPARTMENT OF HIGHWAYS

1. Commissioner
2. One private secretary
3. One principal assistant or deputy
4. Policymaking positions:

(a) State Highway Engineer
(b) Deputy Highway Commissioner
(c) Director, Legal Division
(d) Business Manager
(e) Assistant Commissioner
(f) Area Maintenance Manager
(g) Executive Assistant - Equipment
(h) Executive Assistant - Capitol Assets
(i) Executive Assistant - Maintenance
(j) Executive Assistant - Special
(k) County Maintenance Superintendent
(l) Ten (10) Highway Administrative Managers

5. Personnel employed for less than ninety (90) working days a year

R. HUMAN RIGHTS COMMISSION

1. Executive Director
2. Personnel employed for less than ninety (90) working days a year
3. Policymaking position:

   (a) Attorney

S. HUMAN SERVICES

1. Commissioner
2. One private secretary
3. One principal assistant or deputy
4. Policymaking position:

   (a) One Deputy Commissioner

5. Members of the State Advisory Board
6. Members of the Advisory Board of Orthopedic Surgeons
7. State and local officials serving ex officio and performing incidental administrative duties or acting in an advisory capacity
8. Part-time professional personnel engaged in professional services without administrative duties and personnel employed for less than ninety (90) working days a year

T. INSURANCE COMMISSION

1. Commissioner
2. One private secretary
3. One principal assistant or deputy
4. Policymaking positions:

   (a) Legal Counsel
   (b) Director, Rates and Forms
   (c) Director, Consumer Services Division
   (d) Director, Financial Conditions Division

5. Part-time professional personnel engaged in professional services without administrative duties and personnel employed for less than ninety (90) working days a year

U. LABOR DEPARTMENT

1. Commissioner
2. One private secretary
3. One principal assistant or deputy
4. Policymaking positions:

   (a) Director, Consumer Protection
   (b) Director, Safety-Boiler
   (c) Director, Wage and Hour
   (d) Fiscal Director

5. Part-time professional personnel engaged in professional services without administrative duties and personnel employed for less than ninety (90) working days a year

V. LIBRARY COMMISSION

1. The members of the Library Commission
2. Executive secretary
3. One private secretary
4. Members of advisory boards and committees who serve in a nonexecutive capacity
5. State and local officials serving ex officio and performing incidental administrative duties or acting in an advisory capacity
6. Part-time professional personnel engaged in professional services without administrative duties and personnel employed for less than ninety (90) working days a year
7. Part-time regional employee

W. LOTTERY COMMISSION

1. Commissioner
2. One private secretary
3. Deputy Director - Security
4. Deputy Director - Marketing
5. Deputy Director - F&A

X. DEPARTMENT OF MOTOR VEHICLES

1. Commissioner
2. One private secretary
3. Deputy Commissioner
4. Policymaking positions:

   (a) Manager, Administration
   (b) Manager, Investigation and Control
   (c) Manager, Operations
   (d) Manager, Public Relations
   (e) Special Assistant - Motor Vehicles

5. Part-time professional personnel engaged in professional services without administrative duties and personnel employed for less than ninety (90) working days a year

Y. DEPARTMENT OF NATURAL RESOURCES

1. Director
2. Members of advisory board
3. One private secretary
4. One principal assistant or deputy
5. Policymaking position:

   (a) Deputy Director, Natural Resources

6. Attorneys serving as legal counsel
7. Executive secretary, Public Land Corporation

Z. NON-INTOXICATING BEER COMMISSION

1. Commissioner
2. One private secretary
3. One principal assistant or deputy
4. Personnel employed for less than ninety (90) working days a year

AA. PUBLIC SERVICE COMMISSION

1. Commissioners
2. Commissioners' secretaries
3. One principal assistant or deputy
4. Consumer Advocate
5. Policymaking position:

   (a) Executive Director, Public Service Commission

6. Part-time professional personnel engaged in professional services without administrative duties and personnel employed for less than ninety (90) working days a year
7. Court reporters

BB. RAILROAD MAINTENANCE AUTHORITY

1. Executive Director
2. One private secretary
3. Personnel employed for less than ninety (90) working days a year
4. Policymaking positions:

   (a) Senior Operations Manager
   (b) Comptroller
   (c) Manager of Planning, Passenger and Administrative Services

CC. DIVISION OF REHABILITATION SERVICES

1. Director
2. One principal assistant or deputy
3. Policymaking positions:

   (a) Deputy Director, Program Operations
   (b) Deputy Director, Program Administration

4. Members of advisory committees
5. State and local officials serving ex officio and performing incidental administrative duties or acting in an advisory capacity
6. Part-time professional personnel engaged in professional services without administrative duties and personnel employed for less than ninety (90) working days a year
7. Rehabilitation patients who are employed by DRS for remuneration as part of a rehabilitation training program

DD. TAX DEPARTMENT

1. State Tax Commissioner
2. Assistant Tax Commissioner
3. Secretaries to the State Tax Commissioner
4. Secretaries to the Assistant Tax Commissioner
5. Policymaking position:

   (a) Three (3) Deputy Tax Commissioners
   (b) Six (6) Tax Coordinators
   (c) General Counsel

6. Professional or technical personnel engaged pursuant to special consultant contracts
7. Personnel employed for less than ninety (90) working days a year

EE. VETERANS' AFFAIRS

1. Director
2. Policymaking position:

   (a) Administrator, State Veterans' Home

3. Part-time professional personnel engaged in professional services without administrative duties and personnel employed for less than ninety (90) working days a year
4. Part-time personnel paid on an hourly basis who are employed for less than ninety (90) working days a year, effective 1/1/70

FF. WATER DEVELOPMENT AUTHORITY

1. Director
2. Personnel employed for less than ninety (90) working day a year
3. Board members

GG. WORKERS' COMPENSATION FUND

1. State Workers' Compensation Commission
2. One private secretary
3. One principal assistant or deputy
4. Policymaking position:

   (a) Administrative Assistant

5. Workers' Compensation Appeal Board and its clerical employees
6. Claims Investigators
7. Trial Examiners
8. Part-time professional or technical personnel engaged in professional or consultant services without administrative duties and personnel employed for less than ninety (90) working days a year

APPENDIX C

PART 900-INTERGOVERNMENTAL PERSONNEL ACT PROGRAMS

Subpart F-Standards for a Merit System of Personnel Administration

Sec.

900.601 Purpose.
900.602 Applicability.
900.603 Standards for a merit system of personnel administration.
900.604 Compliance.
900.605 Establishing a merit requirement.
900.606 Publication of procedures to implement merit requirements.

Appendix A to the Standards for a Merit System of Personnel Administration.

AUTHORITY: 42 U.S.C. 4728, 4763; E.O. 11589, 3 CFR Part 557 (1971-1975 Compilation).

Subpart F-Standards for a Merit System of Personnel Administration

§ 900.601 Purpose.

(a) The purpose of these regulations is to implement provisions of Title II of the Intergovernmental Personnel Act of 1970, as amended, relating to Federally required merit personnel systems in State and local agencies, in a manner that recognizes fully the rights, powers, and responsibilities of State and local governments and encourages innovation and allows for diversity among State and local governments in the design, execution, and management of their systems of personnel administration, as provided by that Act.

(b) Certain Federal grant programs require, as a condition of eligibility, that State and local agencies that receive grants establish merit personnel systems for their personnel engaged in administration of the grant-aided program. These merit personnel systems are in some cases required by specific Federal grant statutes and in other cases are required by regulations of the Federal grantor agencies. Title II of the Act gives the U.S. Office of Personnel Management authority to prescribe standards for these Federally required merit personnel systems.

§ 900.602 Applicability.

(a) Sections 900.603-604 apply to those State and local governments that are required to operate merit personnel systems as a condition of eligibility for Federal assistance or participation in an intergovernmental program. Merit personnel systems are required for State and local personnel engaged in the administration of assistance and other intergovernmental programs, irrespective of the source of funds for their salaries, where Federal laws or regulations require the establishment and maintenance of such systems. A reasonable number of positions, however, may be exempted from merit personnel system coverage.

(b) Section 900.605 applies to Federal agencies that operate Federal assistance or intergovernmental programs.

§ 900.603 Standards for a merit system of personnel administration.

The quality of public service can be improved by the development of systems of personnel administration consistent with such merit principles as-

(a) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.

(b) Providing equitable and adequate compensation.

(c) Training employees, as needed, to assure high quality performance.

(d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.

(e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the Federal equal employment opportunity and nondiscrimination laws.

(f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

§ 900.604 Compliance.

(a) Certification by Chief Executives.

(1) Certification of agreement by a chief executive of a State or local jurisdiction to maintain a system of personnel administration in conformance with these Standards satisfies an applicable Federal merit personnel requirements of the Federal assistance or other programs to which personnel standards on a merit basis are applicable.

(2) Chief executives will maintain these certifications and make them available to the Office of Personnel Management.

(3) In the absence of certification by the chief executive, compliance with the Standards may be certified by the heads of those State and local agencies that are required to have merit personnel systems as a condition of Federal assistance or other intergovernmental programs.

(b) Resolution of Compliance Issues.

(1) Chief executives of State and local jurisdictions operating covered programs are responsible for supervising compliance by personnel systems in their jurisdictions with the Standards. They shall resolve all questions re-

garding compliance by personnel systems in their jurisdictions with the Standards. Findings and supporting documentation with regard to specific compliance issues shall be maintained by the chief executive, or a personal designee, and shall be forwarded, on request, to the Office of Personnel Management.

(2) The merit principles apply to systems of personnel administration. The Intergovernmental Personnel Act does not authorize OPM to exercise any authority, direction or control over the selection, assignment, advancement, retention, compensation, or other personnel action with respect to any individual State or local employee.

(3) If a chief executive is unable to resolve a compliance issue to the satisfaction of the Office of Personnel Management, the Office will assist the chief executive in resolving the issue. The Office of Personnel Management, as authorized by section 208 of the Intergovernmental Personnel Act, will determine whether personnel systems are in compliance with the Standards and will advise Federal agencies regarding application of the Standards and recommend actions to carry out the purpose of the Act. Questions regarding interpretation of the Standards will be referred to the Office of Personnel Management.

§ 900.605 Establishing a merit requirement.

Federal agencies may adopt regulations that require the establishment of a merit personnel system as a condition for receiving Federal assistance or otherwise participating in an intergovernmental program only with the prior approval of the Office of Personnel Management. All existing regulations will be submitted to the Office of Personnel Management for review.

§ 900.606 Publication of procedures to implement merit requirements.

Procedures to implement these merit requirements will be specified in the Federal Personnel Manual System and other relevant publications of the Office of Personnel Management.

APPENDIX A TO THE STANDARDS FOR A MERIT SYSTEM OF PERSONNEL ADMINISTRATION

Part I: The following programs have a statutory requirement for the establishment and maintenance of personnel standards on a merit basis.

Program, Legislation, and Statutory Reference

Food Stamp, Food Stamp Act of 1977, as amended; 7 U.S.C. 2020(e)(6)(B).

National Health Planning and Resources Development, Public Health Service Act (Title XV), as amended by the National Health Planning and Resources Development Act of 1974, section 1522, on January 2, 1975; 42 U.S.C. 300m-1(b)(4)(B).

Old-Age Assistance, Social Security Act (Title I), as amended by the Social Security Act Amendments of 1939; section 101, on August 10, 1939; 42 U.S.C. 302(a)(5)(A).[1]

Appendix C. Intergovernmental Personnel Act Programs (Cont'd)

Employment Security (Unemployment Insurance and Employment Services), Social Security Act (Title III), as amended by the Social Security Act Amendments of 1939, section 301, on August 10, 1939, and the Wagner-Peyser Act, as amended by Pub. L. 81-775, section 2, on September 8, 1950; 42 U.S.C. 503(a)(1) and 29 U.S.C. 49d(b).

Aid to Families with Dependent Children, Social Security Act (Title IV-A), as amended by the Social Security Act Amendments of 1939, section 401, on August 10, 1939; 42 U.S.C. 602(a)(5).

Aid to the Blind, Social Security Act (Title X), as amended by the Social Security Act Amendments of 1939, section 701, on August 10, 1939; 42 U.S.C. 1202(a)(5)(A).[1]

Aid to the Permanently and Totally Disabled, Social Security Act (Title XIV), as amended by the Social Security Act Amendments of 1950, section 1402, on August 28, 1950; 42 U.S.C. 1352(a)(5)(A).[1]

Aid to the Aged, Blind or Disabled, Social Security Act (Title XVI), as amended by the Public Welfare Amendments of 1962, section 1602, on July 25, 1962; 42 U.S.C. 1382(a)(5)(A).[1]

Medical Assistance (Medicaid), Social Security Act (Title XIX), as amended by the Social Security Amendments of 1965, section 1902, on July 30, 1965; 42 U.S.C. 1396(a)(4)(A).

State and Community Programs on Aging (Older Americans), Older Americans Act of 1965 (Title III), as amended by the Comprehensive Older Americans Act Amendments of 1978, section 307 on October 18, 1978; 42 U.S.C. 3027(a)(4).

Adoption Assistance and Foster Care, Adoption Assistance and Child Welfare Act of 1980; 42 U.S.C. 671 (a)(5).

Part II: The following programs have a regulatory requirement for the establishment and maintenance of personnel standards on a merit basis.

Program, Legislation, and Regulatory Reference

Occupational Safety and Health Standards, Williams-Steiger Occupational Safety and Health Act of 1970; Occupational Safety and Health State Plans for the Development and Enforcement of State Standards; Department of Labor, 29 CFR 1902.3(h).

Occupational Safety and Health Statistics, Williams-Steiger Occupational Safety and Health Act of 1970; BLS Grant Application Kit, May 1, 1973, Supplemental Assurance No. 15A.

Child Welfare Services, Social Security Act (Title IV-B); 45 CFR 1392.49(c).

Development Disabilities Services and Facilities Construction, Developmental Disabilities Services and Facilities Construction Act, as amended by Pub. L. 95-602, on November 6, 1978; 45 CFR 1386.21.

Appendix C. Intergovernmental Personnel Act Programs (Cont'd)

Emergency Management Assistance, Civil Defense Act of 1950 (Title II), as amended; 44 CFR 302.5.

Comprehensive Employment and Training Act, Comprehensive Employment and Training Act of 1973; 29 CFR 98.14(a).

Part III: The following programs have personnel requirements which may be met by a merit system which conforms to the Standards for Merit Systems of Personnel Administration.

Program, Legislation, and Reference

Disability Determination Services, Social Security Act (Titles II and XVI), as amended; SSA Disability Insurance State Manual, Part IV, § 425.1.

Health Insurance for the Aged (Medicare), Social Security Act (Title XVIII), especially as amended by the Health Insurance for the Aged Act, on July 30, 1965; SSA State Operations Manual, Part IV section 4510(a).

(FR Doc. 83-5584 Filed 3-3-83; 8:45 am)

Billing Code 6325-01-M

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[1]Pub. L. 92-603 repealed Titles I, X, XIV, and XVI of the Social Security Act, effective January 1, 1974, except that "such repeal does not apply to Puerto Rico, Guam, and the Virgin Islands."

APPENDIX D

WEST VIRGINIA CODE CHAPTER 29-6

An Act of the Legislature of West Virginia, First Special Session, 1977

Passed May 6, 1977; in effect from passage

Amended by the Legislature, 1983, 1984 and 1986 Sessions

Approved by the Governor

AN ACT to repeal section thirty-four, article two, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend and reenact article six, chapter twenty-nine of said code, all relating to the Civil Service System and classification of employees; providing a general purpose; definition of terms; establishing a classified service and classified-exempt service and providing exceptions; prohibiting additions to the classified service during certain specified periods of time; exempting policymaking positions from the classified service, including those presently so classified; providing a procedure to bring additional positions under classified service; conditions for reinstatement of certain employees; state personnel department generally; retention of certain personnel, funds and equipment; selection and appointment of director of personnel; duties, qualifications and removal of director, continuing that state agency known as the civil service commission; establishing professional and other qualifications of members of civil service commission; providing the governor with the discretion to retain present members of the commission or to appoint new members with professional qualifications; appointment, terms, removal and compensation of members; selection of chairman and meetings of commission; advisory board; duties of commission; additional duties of director and assistants; establishment of a roster of employees; preparation and rating of tests; rules and regulations of commission; position classification plans for classified and classified-exempt service; pay plan for classified service; reduction in work force; facilities and equipment for department; compliance of officers and employees; status of present employees; certification of payrolls; failure of appointing authority to comply with order of commission; wrongfully withholding certification of payroll; appeals to commission and hearings; judicial review; records of department; services to political subdivisions and cooperation with other agencies; develop and monitor apprenticeship programs; oaths, testimony and production of records; immunity from suit; refusal to testify; prohibition of favoritism or discrimination because of political or religious opinions, affiliations or race; political activities prohibited; certain other acts prohibited; providing penalties; appropriations to department to cover cost of administration; acceptance of grants and contributions; and posting of job openings.

ARTICLE 6. CIVIL SERVICE SYSTEM

Section

1. General purpose.
2. Definition of terms.
3. Classified service.
4. Classified-exempt service; additions to classified service; exceptions.

4.a. Conditions for reinstatement of certain employees.
5. State personnel department generally; personnel, funds, equipment, etc.
6. Selection and appointment of director of personnel; duties; qualifications; removal.
7. Civil service commission; qualifications of members; vacancies; appointment and terms of members; removal; compensation; chairman; meetings; advisory board.
8. Duties of commission generally.
9. Duties of director generally; designating employee to act in absence of director; assistants in preparation and rating of tests.
10. Rules of commission.
10.a. Reduction in work force.
11. Duty to furnish facilities for department's use.
12. Duties of state officers and employees; legal proceedings to secure compliance with article and rules.
13. Status of present employees.
14. Certification of payrolls; failure of appointing authority to comply with order of commission; wrongfully withholding certification of payroll.
15. Appeals by employees to commission; hearings; review by court of appeals.
16. Records of state personnel department.
17. Services to political subdivisions; cooperation with agencies for other jurisdictions.
17.a. Apprenticeship program.
17.b. Advisory board for the apprenticeship program.
18. Oaths, testimony and production of records; immunity from suit.
19. Refusal to testify.
20. Favoritism or discrimination because of political or religious opinions, affiliations or race; political activities prohibited.
21. Acts prohibited.
22. Penalties.
23. Appropriations; cost of administering article; acceptance of grants or contribution.
24. Posting of job openings.

Be it enacted by the Legislature of West Virginia:

That section thirty-four, article two, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and that article six, chapter twenty-nine of said code be amended and reenacted, all to read as follows:

Sec. 1. General purpose. - The general purpose of this article 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 civil 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, except as hereinafter

specified. All employment positions not in the classified service, with the exception of the board of regents, are included in a classification plan known as classified-exempt service.

Sec. 2. Definition of terms. - As used in this article unless the context clearly indicates otherwise:

(1) "Agency" means any administrative unit of state government, including any authority, board, bureau, commission, committee, council, department or office.

(2) "Appointing authority" means a person or group of persons authorized by an agency to make appointments to positions in the classified or classified-exempt service.

(3) "Class" or "class of positions" means a group of positions sufficiently similar in duties, training, experience and responsibilities, as determined by specification, that the same qualifications, the same title, and the same schedule of compensation and benefits may be equitably applied to each position in the group.

(4) "Classification plan" means the plan by which positions in the classified service and classified-exempt service have been allocated by class.

(5) "Classified-exempt service" means an employee whose position satisfies the definitions for "class" and "classify" but who is not covered under the civil service system or employed by the board of regents.

(6) "Classified service" means an employee whose job satisfies the definitions for "class" and "classify" and who is covered under the civil service system.

(7) "Classify" means to group all positions in classes and to allocate every position to the appropriate class in the classification plan.

(8) "Policymaking position" means 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 major administrative component of the agency and (c) reports directly and is directly accountable to the administrative or executive head of the agency.

(9) "Position" means a particular job which has been classified based on specifications.

(10) "Specification" means a description of a class of position which defines the class, provides examples of work performed and the minimum qualifications required for employment.

(11) "Veteran" means 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), or the Vietnam Conflict (August 5, 1964-May 7, 1975), and who has received a discharge under honorable conditions from such service.

Sec. 3. Classified service. - The classified service includes all positions covered by the present civil service system as of the thirtieth day of June, one thousand nine hundred seventy-six, except as otherwise provided in this article. Positions may be added to the classified service as provided in section four of this article.

Sec. 4. Classified-exempt service; additions to classified service; exceptions. - (a) The classified-exempt service comprises all positions not included in the classified service and those positions specifically excepted from the classified service as provided in this section.

In no event shall persons employed by the board of regents be considered as included in either the classified or classified-exempt service: Provided, that the joint committee on government and finance shall direct a special study for the purpose of consideration by the legislature of including any persons employed by the board of regents in a civil service system. The board of regents, and its advisory council of classified employees, the civil service commission, or any other state agency shall cooperate in such study as may be directed by the joint committee on government and finance. The study shall include reasonable notice and opportunities for all persons employed by the board of regents to submit data, objections, suggested proposals, evidence or comments orally or in writing concerning the issue of civil service coverage. The joint committee on government and finance shall report its findings, together with any recommendations, to the legislature on or before the first day of the regular session in the year one thousand nine hundred eighty-four.

Except for the period commencing on the first day of July, one thousand nine hundred seventy-six, and ending on the first Monday after the second Wednesday of the following January and except for the same periods commencing in the year one thousand nine hundred eighty, and in each fourth year thereafter, the governor may, by executive order, with the written consent of the civil service commission and the appointing authority concerned, add to the list of positions in the classified service, but such additions shall not include the following:

(1) The state legislature and other officers elected by popular vote and persons appointed to fill vacancies in elective offices.

(2) Members of boards and commissions and heads of departments appointed by the governor or such heads of departments selected by commissions or boards when expressly exempt by law or board order.

(3) Excluding the policymaking positions in an agency, one principal assistant or deputy and one private secretary for each board or commission or head of a department elected or appointed by the governor or legislature.

(4) All policymaking positions.

(5) Not more than fifteen employees in the office of the governor.

(6) Judges, referees, receivers, jurors and notaries public.

(7) The secretaries and clerks of each judge of a court of record.

(8) Patients or inmates employed in state institutions.

(9) Persons employed in a professional or scientific capacity to make or conduct a temporary and special inquiry, investigation or examination on behalf of the legislature or a committee thereof, an executive department or by authority of the governor.

(10) All employees assigned to the executive mansion.

(11) Superintendents of county maintenance of roads.

(12) Part-time professional personnel engaged in professional services without administrative duties and personnel employed for less than ninety working days a year.

(13) Employees hired under the governor's emergency employment program of 1983, or the federal emergency jobs and humanitarian aid program of 1983.

All executive orders of the governor adding to the list of positions in the classified service which were dated or issued during the period commencing on the first day of July, one thousand nine hundred seventy-six, and ending on the first Monday after the second Wednesday of the following January or which are dated or issued within the same period commencing in the year one thousand nine hundred eighty, or in each fourth year thereafter, shall be null and void, and no person occupying a position added by such executive order to the list of positions in the classified service shall be entitled on account of such order to any right bestowed upon any position or person within the classified service by the provisions of this article or by any rule or regulation promulgated thereunder.

Nothing herein shall be construed as precluding the appointing authorities from filling any classified-exempt position in the manner in which positions in the classified service are filled.

(b) All positions of managers and clerks of stores operated by the alcohol beverage control commissioner, all positions under the supervision of the several superintendents of county maintenance of roads, but not such superintendents, all custodians, janitors and laborers positions in any covered agency shall be included in the classified service effective the first day of July, one thousand nine hundred eighty-three: Provided, that any person required to be included in the classified service by the provisions of this subsection who was employed in any of the positions included herein as of the effective date of this section [May 31, 1983], or who was required to be included in the classified service by any of the executive orders of the governor numbered 1-83, 2-83 or 3-83, dated the thirteenth day of January, one thousand nine hundred eighty-three, shall not be required to take and pass qualifying or competitive examinations upon or as a condition to being added

to the classified service: Provided, however, that no person required to be included in the classified service by the provisions of this subsection or by any of the executive orders of the governor numbered 1-83, 2-83 or 3-83, dated the thirteenth day of January, one thousand nine hundred eighty-three, who was employed in any of the positions included herein as of the effective date of this section, shall be thereafter severed, removed or terminated in his employment prior to his entry into the classified service except for cause as if such person had been in the classified service when severed, removed or terminated.

Sec. 4.a. Conditions for reinstatement of certain employees. - Any present or former employee in the classified-exempt service who is or has been laid off within the fiscal year commencing the first day of July, one thousand nine hundred eighty-two, due to a reduction in force because of a lack of funds whose position was subsequently brought within the classified service by reason of the provisions of subsection (b), section four [§ 29-6-4(b)] of this article or any executive order issued pursuant to subsection (a) of said section four [§ 29-6-4(a)] since the first day of July, one thousand nine hundred eighty-two, or within one year of such employee being so laid off, shall, if the employing agency of such employee rehires a person or persons to the same or lower classification as that given such position in the classified service, have the following special rights for reinstatement subject to the following terms and conditions:

(1) For two years from the date of severance from employment the employee shall have the right of reinstatement to his former or lower classification as if the employee had not been laid off and notwithstanding any registers which may exist for that classification: Provided, that the employee take and pass any required qualifying examination and otherwise comply with the regulations of the civil service commission governing employment in a position within the classified service unless the employee is reinstated to substantially the same work and upon such reinstatement has at least three consecutive years of experience as an employee of state government; and

(2) Such employee has not reached the age of seventy, been convicted of a crime involving moral turpitude since his layoff and has not developed by the date of his reinstatement a permanent physical disability rendering him incapable of performing his duties.

Nothing in this section shall be construed to require that an employee who has been reinstated following a layoff be compensated at a rate in excess of that rate of compensation attributable to the position in the classified service to which such employee had been reinstated, irrespective of the position or rate of compensation held or received by such employee prior to such layoff or that such employee had held a higher position in the classified service prior to such layoff and had received a higher rate of compensation.

Sec. 5. State personnel department generally; personnel, funds, equipment, etc. - The present department of personnel of the civil service system as of the effective date of this article is continued. The services of the employees of the present office of the director of personnel shall be

considered continuous. In addition, all funds, equipment, supplies, personnel and property records, or anything of value now in the possession of the state personnel department shall remain therein.

Sec. 6. Selection and appointment of director of personnel; duties; qualifications; removal. - After selection through open competitive examination, then upon recommendation of the civil service commission, the governor shall appoint a director of personnel, who shall be experienced in the field of personnel administration, and who shall be knowledgeable concerning scientific methods governing the appointment, promotion, transfer, layoff, removal, discipline, classification, compensation and welfare of employees, and who is in known sympathy with the application of merit principles in public employment. The selection and appointment must be in conformity with civil service rules. The present director of personnel may be the appointee. It shall be his duty to administer this article so as to effectuate the general purpose of such article as set forth in section one hereof. The director of personnel may be removed by the civil service commission for cause only after he has been presented in writing with the reasons for his removal. He shall be given an opportunity, not less than fifteen days, to answer any charges either in writing or upon his request to be heard by the commission. The statement of reasons and answer or transcript of hearing shall be filed with the secretary of state as a public record. The decision of the commission, after a hearing, shall be final and not subject to appeal.

None of the provisions of section two-a, article seven, chapter six of this code, except the annual salary provision, shall be applicable to the director of personnel of the civil service system.

Sec. 7. Civil service commission; qualifications of members; vacancies; appointment and terms of members; removal; compensation; chairman; meetings; advisory board. - (a) That agency of state government heretofore established and known as the civil service commission shall continue to exist. The commission shall consist of three members with the following qualifications: One shall be a person with professional experience in the personnel matters of business and industry; one with such experience in the field of government personnel administration; and one with such experience in the field of labor.

Of the three members of the commission: One shall serve for a term ending on the thirtieth day of June, one thousand nine hundred eighty; one for a term ending on the thirtieth day of June, one thousand nine hundred eighty-one; and one for a term ending on the thirtieth day of June, one thousand nine hundred eighty-two. Thereafter, each member of the commission shall be appointed for a term ending six years from the date of expiration of the term of which his predecessor was appointed, except that a person appointed to fill a vacancy occurring prior to the expiration of such term shall be appointed for the remainder of the term. Each member of the commission shall hold office until his successor is appointed and qualified.

The members of the civil service commission shall be persons in sympathy with the application of merit principles to public employment. No member of the commission shall be a member of any local, state, or national committee

of a political party or any officer or member of a committee in any partisan political club or organization or shall hold, or be a candidate for, any paid public office. Not more than two members of the same political party shall serve on the commission at the same time.

(b) The governor shall nominate, and by and with the advice and consent of the Senate, appoint the members of the commission. On or after the effective date of this article, the governor may continue in office any member of the commission previously appointed for the term to which such member was appointed, notwithstanding the qualifications established in subsection (a) of this section; or the governor may appoint to complete such term a new member who shall meet such professional qualifications.

(c) Except as permitted by subsection (b) of this section, a member of the commission 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, chapter six of this code for the removal by the governor of state elected officers.

(d) Members of the commission shall each be paid seventy-five dollars for each day devoted to the work of the commission, but not more than one thousand eight hundred dollars in any one fiscal year. 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.

(e) The commission shall elect one of its members chairman. It shall meet at such time and place as shall be specified by call of the chairman or the director of personnel. 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. Two members shall constitute a quorum for the transaction of business.

(f) There is hereby created an advisory board to advise the commission and the director in the administration of this article. The advisory board shall consist of the appointing authorities from all agencies having employees in the classified service.

Sec. 8. Duties of commission generally. - In addition to the duties expressly set forth elsewhere in this article, the commission shall:

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

(2) Advise the governor and the director on problems concerning personnel administration.

(3) 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.

(4) 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.

(5) Make an annual report and special reports and recommendations to the governor and to the Legislature.

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

Sec. 9. Duties of director generally; designating employee to act in absence of director; assistants in preparation and rating of tests. - (a) The director, as executive head of the department, shall direct and supervise all its administrative and technical activities. In addition to the duties imposed upon him elsewhere in this article, it shall be his duty:

(1) To apply and carry out this article and the rules adopted thereunder.

(2) To attend meetings of the commission and to act as its secretary and keep minutes of its proceedings.

(3) To establish and maintain a roster of all employees in the classified and classified-exempt service, in which there shall be set forth, as to each employee, the class title, pay or status, and other pertinent data.

(4) To appoint such employees of the department and such experts and special assistants as may be necessary to carry out effectively the provisions of this article.

(5) To foster and develop, in cooperation with appointing authorities and others, programs for the improvement of employee effectiveness, including training, safety, health, counseling and welfare.

(6) To make available to the public information about vacancies in the classified and classified-exempt service and to strive constantly to attract to the career service of this state people of the highest ability.

(7) To investigate from time to time the operation and effect of this law and of the rules made thereunder and to report his findings and recommendations to the commission and the governor.

(8) To make to the commission an annual report regarding the work of the department and such special reports as he may consider desirable.

(9) To prepare the annual budget for the department of personnel and, when approved by the commission, submit it to the director of the budget.

(10) To perform any other lawful acts which he may consider necessary or desirable to carry out the purposes and provisions of this article.

(b) In the event of the absence of the director or his inability for any cause to discharge the powers and duties of his office, the commission may from time to time designate in writing an employee of the department to act for him. In such case, the powers and duties of the director shall devolve upon such employee designated by the commission.

(c) The director may designate appropriate persons, including officers and employees in the state service, to assist in the preparation and rating of tests. An appointing authority shall excuse any employee in his division from his regular duties for the time required for his work as an examiner. No officer or employee shall be entitled to extra compensation for further services as an examiner but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties as an examiner; except that in the event the expenses are paid, or are to be paid, by a third party, reimbursement will not be made by the state.

Sec. 10. Rules of Commission. - The commission shall have the authority to promulgate, amend or repeal rules, in accordance with chapter twenty-nine-a of this code, to implement the provisions of this article.

(1) For the preparation, maintenance and revision of a position classification plan for all positions in the classified service and a position classification plan for all positions in the classified-exempt service, based upon similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for and the same schedule of pay may be equitably applied to all positions in the same class. The position classification plan for classified-exempt service shall become effective not later than the first day of July, one thousand nine hundred seventy-nine. Except for persons employed by the board of regents, all persons receiving compensation in the form of a wage or salary, funded either in part or in whole by the state, shall be included in either the position classification plan for classified service or classified-exempt service. After each such classification plan has been approved by the commission, the director shall allocate the position of every employee in the classified service to one of the classes in the classified plan and the position of every employee in the classified-exempt service to one of the positions in the classified-exempt plan. Any employee affected by the allocation of a position to a class shall, after filing with the director of personnel a written request for reconsideration thereof in such manner and form as the director may prescribe, be given a reasonable opportunity to be heard thereon by the director. The interested appointing authority shall be given like opportunity to be heard.

(2) For a pay plan for all employees in the classified service, after consultation with appointing authorities and the state fiscal officers, and after a public hearing held by the commission. Such pay plan shall become effective only after it has been approved by the governor after submission to him by the commission. Amendments to the pay plan may be made in the same manner. Each employee shall be paid at one of the rates set forth in the pay plan for the class of position in which he is employed. The principle of equal pay for equal work in the several agencies of the state government shall be followed in the pay plan as established hereby.

(3) For open competitive examinations to test the relative fitness of applicants for the respective positions in the classified service. Such examinations need not be held until after the rules have been adopted, the service classified and a pay plan established, but shall be held not later than one year after this article takes effect. Such examinations shall be announced publicly at least fifteen days in advance of the date fixed for the filing of applications therefor, and may be advertised through the press, radio and other media. The director may, however, in his discretion, continue to receive applications and examine candidates long enough to assure a sufficient number of eligibles to meet the needs of the service; and may add the names of successful candidates to existing eligible lists in accordance with their respective ratings.

An additional five points shall be awarded to the score of any examination successfully completed by a veteran. A disabled veteran shall be entitled to an additional ten points, rather than five points as aforesaid, upon successful completion of any examination.

(4) For promotions within the classified service which shall give appropriate consideration to the applicant's qualification, record of performance and his score on written examination, when such examination is practicable. 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. An advancement in rank or grade or an increase in salary beyond the maximum fixed for the class shall constitute a promotion.

(5) For the establishment of eligible lists of appointment and promotion within the classified service, upon which lists shall be placed the names of successful candidates in the order of their relative excellence in the respective examinations. Eligibility for appointment from any such list shall continue not longer than three years. An appointing authority shall make his selection from the top five names on the appropriate lists of eligibles.

(6) For the rejection of candidates or eligibles within the classified service who fail to comply with reasonable requirements in regard to such factors as age, physical condition, character, training and experience, who are addicted to alcohol or narcotics, or who have attempted any deception or fraud in connection with an examination, or where in the judgment of the commission there is a reasonable doubt of the loyalty of the candidate or allegiance to the nation.

(7) For a period of probation not to exceed one year before appointment or promotion may be made complete with the classified service.

(8) For provisional employment without competitive examination within the classified service when there is no appropriate eligible list available. No such provisional employment shall continue longer than six months, nor shall successive provisional appointments be allowed, except during the first year after the effective date of this article, in order to avoid stoppage of orderly conduct of the business of the state.

(9) For keeping records of performance of all employees in the classified service, which service records may be considered in determining salary increases and decreases provided in the pay plan; as a factor in promotion tests; as a factor in determining the order of layoffs because of lack of funds or work and in reinstatement; and as a factor in demotions, discharges and transfers.

(10) For layoffs by reason of lack of funds or work, or abolition of a position, or material changes in duties or organization, and for reemployment of employees so laid off, giving consideration in both layoffs and reemployment to performance record and seniority within the classified service.

(11) For discharge or reduction in rank or grade only for cause of employees in the classified service. Discharge or reduction of these employees shall take place only after the person to be discharged or reduced has been presented with the reasons for such discharge 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 appointing authority or his deputy. The statement of reasons and the reply shall be filed as a public record with the director. Notwithstanding the foregoing provisions of this subdivision, no permanent employee shall be discharged from the classified service for absenteeism upon using all entitlement to annual leave and sick leave when such use has been due to illness or injury as verified by a physician's certification or for other extenuating circumstances beyond the employee's control unless his disability is of such a nature as to permanently incapacitate him from the performance of the duties of his position. Upon exhaustion of annual leave and sick leave credits for the reasons specified herein and with certification by a physician that the employee is unable to perform his duties, a permanent employee shall be granted a leave of absence without pay for a period not to exceed six months if such employee is not permanently unable to satisfactorily perform the duties of his position.

(12) For such other rules and administrative regulations, not inconsistent with this article, as may be proper and necessary for its enforcement.

(13) The commission shall review and approve by rules and regulations the establishment of all classified-exempt positions to assure consistent interpretation of the provisions of this article.

The commission and the director may include in the rules provided for in this article such provisions as are necessary to conform to regulations and standards of any federal agency governing the receipt and use of federal grants-in-aid by any state agency, anything in this article to the contrary notwithstanding. The commission and the director shall see that rules and practices meeting such standards are in effect continuously after the effective date of this article.

Sec. 10.a. Reduction in work force. - Notwithstanding any other provision of this article or any rule promulgated thereunder to the contrary, an

employee in the classified service who has performed work for a reasonable period of time in a position with a classification that is higher than the position in which he is employed and classified may, in the event that his regular position would be terminated as a result of a reduction in force in his division, have the right to request that his classification be reviewed and that he be promoted to the higher classified position by passing a qualifying examination for such higher position and providing sufficient evidence of his work periods and satisfactory performance of the duties and responsibilities of the higher classified position.

The commission shall provide by legislative rule for the maintenance of records by all covered agencies of the work periods and rating of job performance of employees performing work in a position or positions with a classification that is higher than the position in which he is employed and classified and the duration of work periods required to request review and promotion.

Sec. 11. Duty to furnish facilities for department's use. - All officers and employees of the state and of municipalities and political subdivisions of the state shall allow the department the reasonable use of public buildings under their control, and furnish heat, light and furniture, for any examination, hearing or investigation authorized by this article. The department shall pay to a municipality or political subdivision the reasonable cost of any such facilities furnished by it.

Sec. 12. Duties of state officers and employees; legal proceedings to secure compliance with article and rules. - All officers and employees of the state shall comply with and aid in all proper ways in carrying out the provisions of this article and the rules, regulations and orders thereunder. All officers and employees shall furnish any records or information which the director or the commission may request for any purpose of this article. The director may institute and maintain any action or proceeding at law or in equity that he considers necessary or appropriate to secure compliance with this article and the rules and orders thereunder. The director has the duty to conduct schools, seminars or classes regarding handling of complaints, disciplinary matters and operation of civil service system for supervisory employees of the state. The department head of each department shall designate certain supervisory employees to attend said schools, seminars or classes.

Sec. 13. Status of present employees. - (a) Except in the case of the removal of an employee for cause and except for persons in policymaking positions, employees who have gained permanent status under the present system of classified service as of the effective date of this article will not be subject to further examination, except when they wish to qualify for promotion, and will continue in the position they hold. Their rights as permanent employees shall be continuous. Employees holding provisional appointments under the present system of classified service must qualify for permanent appointments under competitive examinations.

(b) No person occupying a policymaking position, including persons included in and qualified for the classified service on the effective date of

this article, shall be entitled to any right bestowed upon any position or person within the classified service by the provisions of this article or by any rule or regulation promulgated thereunder: Provided, that any person, who, on the effective date of this article, is serving in a policymaking position and is included in and qualified for the classified service in any agency to which the federal merit systems standards apply on account of a state program financed in whole or in part by federal funds shall lose no rights because of the enactment of this section.

(c) Employees holding positions included under classified service by this article or placed under the same by future action shall be required to take qualifying tests prescribed by the director.

Nothing in this article shall preclude the reclassification or reallocation as provided by this article of any position.

Sec. 14. Certification of payrolls; failure of appointing authority to comply with order of commission; wrongfully withholding certification of payroll. - (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 article 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 within thirty days after a hearing, he shall be personally liable to the appealing employee for any salary due from the time of the final order of reinstatement by the commission.

(c) 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.

Sec. 15. Appeals by employees to commission; hearings; review by court of appeals. - Any employee in the classified service who is dismissed or demoted after completing his probationary period of service or who is suspended for more than thirty days in any one year, may, within thirty days after such dismissal, demotion or suspension, appeal to the commission for review thereof. Upon such review, both the appealing employee and the appointing authority whose action is reviewed shall have the right to be heard publicly and to present evidentiary facts. At the hearing of such appeals, technical rules of evidence shall not apply. At any such hearing, the burden of proof

will be upon the appointing authority to establish that the dismissal, demotion or suspension was proper in all respects and that such dismissal, demotion, or suspension was not arbitrary or capricious. Such burden shall remain with the appointing authority throughout every stage of such hearing. If the commission finds that the action complained of was taken by the appointing authority without good cause the employee shall be reinstated to his former position or a position of like status and pay, without loss of pay for the period of his suspension, and awarded his reasonable and necessary attorneys fees expended therein, such fees to be paid by the appointing authority. If the commission finds that the action complained of and taken by the appointing authority was too severe but was with good cause, the commission may provide for such other remedy or remedies, as may be deemed appropriate and in the best interest of the parties. The commission shall expressly have the authority by order to provide for such remedies as it may deem to be appropriate after it has made a complete review of the circumstances of each individual case and such remedies shall include, but not be limited to, the restoration of all or part of an individual's back pay or wages for the period of the suspension or reinstatement of an individual to his former position or a position of like status and pay or reemployment to any other position which in the judgment of the commission is in the best interest of the parties or any combination of such remedies. When any employee is dismissed and not reinstated after such appeal, the commission in its discretion may direct that his name be placed on an appropriate reemployment list, for employment in any similar position other than the one from which he has been removed. Any final action or decision taken or made hereunder shall be subject to review by the supreme court of appeals, if appeal is made within sixty days of the action or decision complained of.

Sec. 16. Records of state personnel department. - The records of the department, except such records as the rules may properly require to be held confidential for reasons of public policy, shall be public records and shall be open to public inspection, subject to reasonable regulations as to the time and manner of inspection which may be prescribed by the director.

Sec. 17. Services to political subdivisions; cooperation with agencies for other jurisdictions. - (a) Subject to the approval of the commission the director may enter into agreements with any municipality or other political subdivision of the state to furnish services and facilities of the department to such municipality or political subdivision in the administration of its personnel on merit principles. Any such agreements shall provide for the reimbursement to the state of the reasonable cost of the services and facilities furnished, as determined by the director. All municipalities and political subdivisions of the state are hereby authorized to enter into such agreements. Subject to the approval of the commission, the director may enter into an agreement with the state department of health for the inclusion of personnel of local health departments under the classified service system established by this article.

(b) The director may cooperate with governmental agencies for other jurisdictions charged with personnel administration in conducting joint tests and establishing joint lists from which eligibles shall be certified for appointment in accordance with the provisions of this article.

Sec. 17.a. Apprenticeship program. - (a) The civil service system shall develop and monitor apprenticeship programs for all state agencies 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.

(b) These apprenticeship programs will 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.

(c) The director of the civil service commission, or his designee, in cooperation with the 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, which may include, but not be limited to, the following classifications: Computer service technicians; legal assistants; computer systems analysts; computer programmers; computer operators; office machine repairers; physical therapy assistants; electrical engineers; civil engineering technicians; peripheral edp equipment operators; insurance clerks, medical; electrical and electronic technicians; occupational therapists; surveyor helpers; credit clerks, banking and insurance; physical therapists; employment interviewers; mechanical engineers; mechanical engineering technicians; and compression and injection mold machine operators.

(d) The chief administrative officer of each agency in cooperation with the director of the civil service commission, or his designee, shall establish procedures for the coordination of apprenticeship programs developed in accordance with this section.

(e) Subject to the approval of the director of the civil service commission and the procedures established, each participating agency shall determine the location and positions in which apprenticeships are to be established.

(f) The director, or his designee, shall make an annual report to the Legislature and shall include in such report the following:

(1) A review of the development and operation of apprenticeship programs;

(2) The current list of apprenticeable classifications;

(3) A summary of the agencies and types of positions involved;

(4) A summary of registered apprenticeships;

(5) The number of persons who applied for apprenticeship positions under this section;

(6) The number of persons accepted into the apprenticeship programs established in accordance with this section;

(7) The number of persons who successfully completed and received a certificate of completion from the United States department of labor, bureau of apprenticeship and training;

(8) The number of persons who failed to complete apprenticeships in accordance with this section;

(9) The number of persons who remain employed after successfully completing apprenticeships; and

(10) A summary of characteristics of applicants and participants in the program deemed pertinent to the director of the civil service commission.

(g) The recruitment, selection and training of apprentices during their apprenticeship shall be without discrimination because of race, color, religion, national origin or sex. The commission will take affirmative action to provide equal opportunity in apprenticeship programs and will operate the program to assure equal employment in apprenticeship.

(h) The director, or his designee, shall file a report on the development of apprenticeship programs with the governor and the Legislature on or before the first day of January, one thousand nine hundred eighty-seven.

(i) No contract between the state and a vendor, whereby persons who have participated in the apprenticeship program are to be hired, may be approved by the attorney general unless and until said contract contains a statement that the vendor will not discriminate in employment or public accommodation because of race, religion, color, national origin, ancestry, sex, age, blindness or handicap of any individual.

Sec. 17.b. Advisory board for the apprenticeship program. - In order to better accomplish the goals of this program an apprenticeship advisory board is established. Its members shall include the commissioner of labor or a designee, the commissioner of finance and administration or a designee, the state superintendent of the department of education or a designee, two employees of the state who are covered under the civil service system, and one private citizen, with the employee and citizen members to be appointed by the governor. The employees and the private citizen members shall serve without compensation for two years, after which they may be reappointed.

The commissioner of labor shall call the first meeting of the advisory board within three months of the effective date for this program. At this meeting the chairman of the board shall be elected by the board as a whole.

The advisory board shall meet at least semiannually, at the call of the chairman, for the purpose of receiving, reviewing and evaluating reports from the director of the civil service commission on the achievements and deficiencies of the program. The board may seek the advice and counsel from appropriate members of the United States department of labor who may be knowledgeable about such apprenticeship programs. The board may also prepare written recommendations to the governor on ways to improve the apprenticeship program.

Sec. 18. Oaths, testimony and production of records; immunity from suit. - The commission, each member of the commission and the director shall have power to administer oaths, subpoena witnesses and compel the production of books and papers pertinent to any investigation or hearing authorized by this article. Any person who shall fail to appear in response to a subpoena or to answer any question or produce any books or papers pertinent to any such investigation or hearing or who shall knowingly give false testimony therein shall be subject to the penalty provisions provided for in this article. Immunity from civil suit is hereby granted for all relevant evidence offered at commission hearings.

Sec. 19. Refusal to testify. - If any employee in the classified or classified-exempt service shall willfully refuse or fail to appear before any court or judge, any legislative committee, or any officer, board or body authorized to conduct any hearing or inquiry, or having appeared shall refuse to testify or answer any question relating to the affairs or government of the state or the conduct of any state officer or employee on the ground that his testimony or answers would tend to incriminate him, or shall refuse to accept a grant of immunity from prosecution on account of any matter about which he may be asked to testify at any such hearing or inquiry, he shall forfeit his office or position and shall not be eligible thereafter for appointment to any position in the classified or classified-exempt service.

Sec. 20. Favoritism or discrimination because of political or religious opinions, affiliations or race; political activities prohibited. - (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 commission 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, 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 of a political party, or a financial agent or treasurer within the meaning of the provisions of section three, four or five-e [§§ 3-8-3, 3-8-4 or 3-8-5e], article eight, chapter three of this Code. 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.

(f) 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.

(g) Any classified employee who becomes a candidate for any paid public office as permitted by this section shall be placed on a leave of absence without pay for the period of such candidacy, commencing upon the filing of the certificate of candidacy and upon such other terms and conditions as may be prescribed by legislative rule to be promulgated by the civil service commission no later than the first day of September, one thousand nine hundred eighty-four.

Sec. 21. Acts prohibited. - (a) No person shall make any false statement, certificate, mark, rating or report with regard to any test, certification or appointment made under any provisions of this article or in any manner commit or attempt to commit any fraud preventing the impartial execution of this article and the rules.

(b) No person shall, directly or indirectly, give, render, pay, offer, solicit or accept any money, or other valuable consideration for or on account of any certification appointment, proposed appointment, promotion or proposed promotion to, or any advantage in, a position in the classified service.

(c) No employee of the department, examiner, or other person shall defeat, deceive or obstruct any person in his right to examination, eligibility, certification or appointment under this article, or furnish to any person any special or secret information for the purpose of affecting the rights or prospects of any person with respect to employment in the classified service.

Sec. 22. Penalties. - (a) Any person who willfully violates any provision of this article or of the rules 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.

Sec. 23. Appropriations; cost of administering article; acceptance of grants or contribution. - (a) Appropriations shall be made from the general fund to the department of personnel to meet the cost of administering the provisions of this article.

(b) The director shall maintain accurate records reflecting the cost of administering the provisions of this article.

(c) The department is authorized and directed to accept on behalf of the state any grant or contribution, federal or otherwise, made to assist in meeting the cost of carrying out the purposes of this article.

Sec. 24. Posting of job openings. - Whenever a job opening occurs within the classified service, the appointing authority shall, in addition to any other requirement of law or regulation for the posting of job opening notices, at least ten working days before making an appointment to fill the job opening, post a notice within the building or facility where the duties of the job will be performed and throughout the agency, which notice states that a job opening has occurred and describes the duties to be performed by a person employed in that position.

AFSCME/WV

Union Building • 723 Kanawha Blvd. • Charleston, WV 25301 • Tel. 345-1983

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OFFICE OF SECRETARY OF STATE

The West Virginia Legislature, in enacting West Virginia Code 29-6A-1 intended the matter of reclassification to be grievable. It states that the purpose of the grievance act is to provide an "equitable consistent resolution of employment grievances raised by non-elected state employees who are classified under the state civil service system".

So everyone who files a grievance will be covered by Civil Service classifications to begin with.

West Virginia Code 29-6A-2(i) defines grievance a "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."

A problem with classification is definitely a grievable matter because it strikes at the heart of "compensation" and "terms and conditions of employment."

The exclusion language "or any other matter in which authority to act is not vested with the employer," relied upon by the Civil Service Commission does not expressly preclude grievances over reclassification given: (a) under Civil Service's Classification Review Policy, the first step is with the personnel officer in your respective agency. Therefore, it can be resolved and the authority to act is vested with the employer. (b) Civil Service, by statute, is given an integral role in the grievance process.

West Virginia Code 29-6A-4(c):
The Civil Service Commission gets a copy of the grievant's level two decision and appeal and may submit evidence at the level three hearing.

West Virginia Code 29-6A-4-(d):
The Civil Service Commission gets a copy of the grievant's appeal to the fourth step and may submit evidence to the hearing examiner.

West Virginia Code 29-6A-7:
The Civil Service Commission may appeal an unfavorable ruling to the circuit court.

West Virginia Code 29-6A-11:
Specifically legislates that this statutory procedure supersedes and replaces the existing grievance procedure of the Civil Service Commission. Even though the Civil Service Commission had already decided classification matters were not grievable, we can argue that the legislature wanted broad relief for all grievances.

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OFFICE OF
SECRETARY OF STATE

July 14, 1988

Lowell Basford
Director of Personnel
West Virginia Civil Service System
1900 Washington Street, East
Charleston, WV 25305

RE: AFSCME v. W. Va. Civil Service Comm.
No. 17929

Dear Mr. Basford:

In response to your request for comments on the Civil Service Commission's proposed Regulation 5.04 pertaining to Classification Appeals and the Back Wage Computation Policy, please find enclosed statements of position to be filed on behalf of the American Federation of State, County and Municipal Employees (AFSCME). In general, we find the proposed regulations in conflict with and superceded by the new Grievance Procedure for State Employees Act, W. Va. Code § 29-6A-1, et seq. that was enacted by the legislature after AFSCME filed its mandamus action in this matter. The regulations are also in conflict with the Memorandum of Understanding between AFSCME and the Commission filed on September 28, 1984 with the Supreme Court of Appeals as partial settlement of AFSCME I.

With regard to the back wage policy, it does not particularly address the needs of the individual petitioners in this action as it may eliminate most of the petitioners' claims for back wages. The proposed process is unduly lengthy and cumbersome, it appears that it will take in excess of 145 days to resolve the back pay issues. Furthermore, the proposed procedures amount to a denial of due process, are contrary to the Memorandum of Understanding in AFSCME I and runs afoul of the decisions in AFSCME I, II and III. To eliminate these problems, AFSCME has proposed one simple hearing before the Director of Personnel to resolve the date misclassification began.

Thank you for this opportunity to submit AFSCME's comments. We hope that we are able to resolve our differences at this stage rather than bringing the matter again to the attention of the West Virginia Supreme Court of Appeals.

Sincerely yours,

W. J. Arceneaux III

Webster J. Arceneaux, III

WJA,III:kap
Enclosure
cc: Ron Coder
Rob McCauley
Silas Taylor

AFSCME STATEMENT OF POSITION
REGULATION 5.04 CLASSIFICATION APPEALS

The proposed regulation is in contravention of and superceded by the Grievance Procedure for State Employees Act, W. Va. Code § 29-6A-1, et seq. Without waiving this position, AFSCME submits the following specific comments to proposed Regulation 5.04.

1. Proposed Regulation 5.04(c) is contrary to the memorandum of understanding in AFSCME I because the employee/incumbent's right to have a representative of his choice at the second stage of review before the classification and review division has been deleted.

AFSCME STATEMENT OF POSITION
BACK WAGE COMPUTATION POLICY

The proposed back wage computation policy is in contravention of and superceded by the Grievance Procedure for State Employees Act, W.Va. Code § 29-6A-1, et seq. AFSCME also proposes that a simplified hearing can be used in lieu of the lengthy 145-day process currently proposed. Without waiving that position the following comments specifically address the pertinent paragraphs of the proposed policy.

I. AFSCME disputes the statement of purpose that this back wage policy implements the Supreme Court's decision in AFSCME III. It appears to avoid the issues raised by the Court rather than specifically addressing the individual petitioners' claims for back wages.

IIA. The policy either intentionally or inadvertently is designed to exclude most of the individual petitioners in AFSCME III from a claim for back wages. Most of those petitioners' misclassification decisions occurred more than two years ago and since this policy did not exist they did not have any knowledge that they had to claim back wages within thirty days of a misclassification decision. This provision should be redrafted so that it is clear that all individual petitioners in AFSCME III will have their back wages computed.

IIC. This provision amounts to a denial of due process because it appears to exclude any evidence other than documentary evidence. This procedure is also contrary to AFSCME I, II and III. The last sentence in this paragraph is ambiguous as it does not advise the incumbent when to provide the director the requested information nor is it clear when the 15-day period begins for the incumbent to provide the agency with the requested information. This provision should be redrafted to allow any form of evidence to be presented to the director by the employee and his representative, if he has one.

IIF. This paragraph, particularly the last part requiring comments within 15 days is confusing. The parties have already had 30 days to stipulate the matter. They have also had 40 days to submit evidence. When this 15-day period begins to run and what is to be submitted is unclear.

IIG. The director has a statutory duty to decide the date the misclassification began. To arbitrarily set the date 30 days prior to the date the grievance or classification review was filed is the same position that the Commission took in AFSCME II and lost. This policy as proposed is a denial of due process and contrary to APSCME I, II and III. The portion of the proposed policy that allows the director to avoid making a decision should be deleted.

III. The Commission should review the director's decision on back wages and either party should have the right to bring any dispute with the director's decision to the Commission. The Memorandum of Understanding in AFSCME I provides for Commission review of all classification matters including back wages.

AFSCME STATEMENT OF POSITION
PROPOSED SIMPLIFIED BACK WAGE COMPUTATION POLICY

The proposed back wage computation policy is in contravention of and superceded by the Grievance Procedure for State Employees Act, W. Va. Code § 29-6A-1, et seq. Without waiving this position, AFSCME submits a proposed simplified back wage policy.

The procedure proposed by the Commission is extremely cumbersome and lengthy, especially given the fact that most of the facts will probably already be resolved as a part of the Classification Appeal. Under the proposed policy, the matter will take in excess of 145 days to reach a decision. As a simple alternate procedure, AFSCME proposes holding one hearing that will lead to a decision within 60 days as follows:

1. For the individual petitioners in AFSCME III, within 30 days of the Supreme Court accepting the Commission's plan to implement AFSCME III, and in all future cases within 30 days from the date of the final classification determination, the Director of Personnel shall set a date for a hearing to determine the date that the misclassification began. The incumbent and his representative, if he has one, and the appointing authority, will receive from the Director 30 days' notice of the hearing date.

2. Fifteen days prior to the hearing, the incumbent and his representative, if he has one, and the appointing authority shall meet and disclose their respective positions concerning the date that the misclassification began. At that meeting, the parties will also discuss whether they can agree to a stipulation of the date that the misclassification began.

3. If the incumbent and his representative, if he has one, and the appointing authority stipulate the date that the misclassification began, the appointing authority shall calculate the amount of back wages owed and submit that amount to the Director for submission to the Commission for entry of an order.

4. If a date is not stipulated by the parties, an evidentiary hearing will be held by the Director of Personnel and the incumbent and his representative, if he has one, and the appointing authority shall have the opportunity to present any evidence concerning the date at which the misclassification began.

5. The Director will decide the date at which the misclassification began within 30 days of the hearing and send written copies of the decision to the incumbent and his representative, if he has one, and the appointing authority. The appointing authority shall calculate the amount of back wages owed and submit that calculation to the Director within 10 days of the date of the decision.

6. Within 10 days of the Director's decision, either the incumbent or his representative, if he has one, or the appointing authority may appeal the decision to the Commission. The Commission, at its discretion, may order a hearing on the determination. Whether or not the hearing is held, the Commission has the power to affirm, reverse or modify the determination of the Director. If the Commission declines to hold a hearing on the determination, the Commission's decision about the determination must be issued within 30 calendar days of the Commission's receipt of the determination of the Director. If the Commission orders a hearing on the determination, the Commission's decision about the determination must issue as does any other appeal. A copy of the Commission's decision shall be sent to the incumbent and the appropriate appointing authority.

7. The appointing authority shall pay the incumbent within 15 days of a decision by the Director or the Commission the amount of back wages calculated as set forth above.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

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Deputy Secretary of State

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(Plus all the volunteer help we can get)

August 2, 1988

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Civil Service Commission

RULE: Amendments to Title 143 CSR Series 1

DATE FILED AS AN EMERGENCY RULE: June 21, 1988
Amended July 20, 1988

DECISION NO. 6-88

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

KEN HECHLER
Secretary of State

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OFFICE OF [illegible]
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(Plus all the volunteer help we can get)

DECISION EMERGENCY RULE DECISION (ERD 6-88)

AGENCY: Civil Service Commission
RULE: Amendments to Title 143 CSR Series 1
DATE FILED AS AN EMERGENCY RULE: June 21, 1988, and amended July 20, 1988

par. 1 The Civil Service Commission has filed amendments to Series 1 as an emergency rules on June 21, 1988 and emergency amendments to the prior emergency rules on July 20, 1988.

par. 2 West Virginia Code 29A-3-15A requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.

par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a(a)].

par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).

par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the ERD is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The Civil Service Commission has filed these emergency amendments with supporting documents with the Secretary of State on June 21, 1988 and July 20, 1988, and with the LRMRC on June 22, 1988 and August 2, 1988.

par. 7 It is the determination of the Secretary of State that the Civil Service Commission has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §29-6-10 reads in part:

§29-6-10. Rules of commission.

The commission shall have the authority to promulgate, amend or repeal rules, in accordance with chapter twenty-nine-a (§29A-1-1 et seq.) of this code, to implement the provisions of this article.

par. 9 It is the determination of the Secretary of State that the Civil Service Commission has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency: WV Code 29A-3-15(g) defines "emergency" as follows:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Civil Service Commission are as follows:

In case styled AFSCME v. West Virginia Civil Service Commission, No. 17929, the Supreme Court of Appeals directed the Civil Service Commission to promulgate regulations to implement the fourth step of the classification review process within thirty days from the Court's order of May 20, 1988. These rules represent compliance with the Court's decision.

par. 13 AFSCME v. CSC No. 17929 reads in part:

> Therefore, we direct the CSC to promulgate rules and regulations to implement Step Four of the job classification review procedure as provided in our September 28, 1984 agreed settlement within thirty days of this decision and to provide for strict adherence to the existing time limits within which the employing agency or civil servant may take action on classification review.

par. 14 Although time limitations established by court order are not mentioned within §29A-3-15(g), it is clear that failure to meet such orders would result in substantial harm to the public interest in that it is of great public interest that the orders of the court be deferred to and adhered to.

par. 15 It is the determination of the Secretary of State that this proposal meets the standards for emergency rule.

par. 16 This decision shall be cited as Emergency Rule Decision 6-88 or ERD 6-88 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Civil Service Commission, the Attorney General and the Legislative Rule Making Review Committee.

Ken Hechler

KEN HECHLER
SECRETARY OF STATE

Entered_____

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