

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #7

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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:

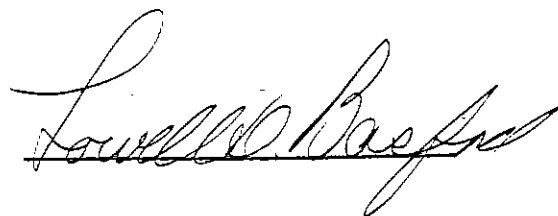
TITLE OF RULE BEING FILED AS AN EMERGENCY:

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:

These emergency rules are in response to an Attorney General's opinion dated August 17, 1988, on the payment of accrued and unused annual leave as provided for in Chapter 5-5-3 of the Code of West Virginia, as amended.

Use Additional Sheets If Necessary.



APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

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Rule Title: Administrative Rules and Regulations of the West Virginia Civil Service System

SECRETARY OF STATE

Type of Rule: X Legislative Interpretive Procedural

Agency WV Civil Service System Address 1900 Washington Street, E. Charleston, West Virginia 25305

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

2. Explanation of above estimates:

No increase in cost is anticipated as a result of these Rules.

3. Objectives of these rules:

To fully implement the provisions of Chapter 5-5-3 of the Code of West Virginia, as amended, as interpreted by the Attorney General's opinion dated August 17, 1988 relating to the lump sum payment of accrued and unused annual leave upon term of employment.

FILING OF ADMINISTRATIVE REGULATIONS

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29-6, Ser. I

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Civil Service Law - Chapter 29-6

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

CIVIL SERVICE SYSTEM

Chapter 29-6-10

Series I

(1987) amended

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

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 14th day of May, 1987, and filed on the 14th day of May, 1987, in the Secretary of State's Office.

1.04. Effective Date-These regulations become effective on the First day of July, 1987.

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, step-mother, 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 II (December 7, 1941, to December 31, 1946), the Korean Conflict (June 27, 1950, to January 31, 1955), or the Vietnam Conflict (August 5, 1964, to May 7, 1975) and who has received a discharge under honorable conditions from such service. 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 (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

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)

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.

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

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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 post-marked 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. 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.

14.06. 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. 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. 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 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)

<u>Length of Service Category</u>	<u>Accrual Rate</u>	<u>Carry-forward Hours</u>
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, step-mother, 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)

<u>Length of Service Category</u>	<u>Accrual Rate</u>	<u>Carry-forward Hours</u>
Less than 5 years of regular employment	.05769 hour per hour paid	240 hours
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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)

~~carryforward 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) (f) 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 and unused 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 and unused 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 monthly rate of pay established for the class by Civil Service daily rate of pay for the month(s) or portion of the month which the accrued and unused annual leave covers. Employees in positions allocated to job classes assigned to an hourly pay schedule or per diem pay schedule approved by the Commission shall be paid according to those standard procedures.

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 or to acquire additional credited service in the retirement system.

(h)(g) 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.

Section 16. Attendance and Leave (Cont'd)

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.

~~(f)~~(h) When Sick Leave Exhausted-For illness of an employee, when the employee's sick leave and compensatory time are exhausted, or for illness in an employee's immediate family when the sick leave allowance of 24 hours per calendar year is exhausted, an employee who requests utilization of annual leave under this Section must be granted any or all accumulated annual leave, provided the employee's illness or the reasons necessitating the presence of the employee with his or her family are verified by a physician's statement in cases in which the leave extends beyond three working days. 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.

Section 16. Attendance and Leave (Cont'd)

(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/ or to acquire additional credited services in the retirement system.

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

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 interfering with or affecting the result of an election or a nomination for office;

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

3. Be a candidate for any national or state paid public office or court of record; or hold any paid public office; or be a candidate or delegate to any state or national political party convention, a member of any national, state or local committee 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.



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help we can get)

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

October 27, 1988

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Civil Service Commission

RULE: Amendment to Series 1; Rules of the Commission

DATE FILED AS AN EMERGENCY RULE: September 15, 1988

DECISION NO. 20-88

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

FILED
1988 OCT 27 PM 5:25
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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

DECISION

EMERGENCY RULE DECISION
(ERD 20-88)

AGENCY: Civil Service Commission

RULE: Amendment to Series 1, Rules of the Commission

FILED AS AN EMERGENCY RULE: September 15, 1988

- par. 1 The Commission has filed amendments to Series 1 as an emergency rule.
- 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 Fire Commission (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 Commission has filed this emergency rule with supporting documents with the Secretary of State on September 15, 1988 and with the LRMRC on September 15, 1988.

- par. 7 It is the determination of the Secretary of State that the 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 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 Commission are as follows:

These emergency rules are in response to an Attorney General's opinion dated August 17, 1988, on the payment of accrued and unused annual leave as provided for in Chapter 5-5-3 of the Code of West Virginia, as amended.
- par. 13 It is the determination of the Secretary of State that this proposal meets the standards for emergency rule.

par. 14 This decision shall be cited as Emergency Rule Decision 20-88 or ERD 20-88 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Commission, the Attorney General and the Legislative Rule Making Review Commission.

KEN HECHLER
SECRETARY OF STATE

Entered _____