

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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May 14 1987

FILED

1987 MAY 14 PM 3:41

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

AGENCY: West Virginia Civil Service System TITLE NUMBER: 143

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 NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

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

AUTHORIZATION IS CITED IN (house or senate bill number) SB 748

SECTION , PASSED ON March 14, 1987

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: July 1, 1987

Lowell D. Pasforn

**TITLE 143
LEGISLATIVE RULES
CIVIL SERVICE SYSTEM**

**SERIES 1
ADMINISTRATIVE RULES AND REGULATIONS OF
THE WEST VIRGINIA CIVIL SERVICE SYSTEM**

§143-1-1. General.

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

1.2. Authority. -- W. Va. Code §29-6-10

1.3. Filing Date. -- June 12, 1987

1.4. Effective Date. -- July 1, 1987

§143-1-2. Preamble.

2.1. 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.

§143-1-3. 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.

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 seven, article six, chapter twenty-nine 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 qualification, or duties, or a reduction in an employee's pay to a lower step in the pay range assigned to the classification. The two (2) 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, and (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 sections six and nine, article six, chapter twenty-nine 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 judgment.

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 article six, chapter twenty-nine of the Code of West Virginia (See Appendix B).

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

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

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

Hearing board. -- The body which hears grievances.

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

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

Intra-agency transfer. -- A transfer within a single agency.

Interagency transfer. -- A transfer from one agency to another.

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 (12) 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 subunit 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 (12) parts into which the calendar year is divided.

Ninety (90) 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.

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 (1) 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 (1) 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.

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 reemployment 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.

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 and 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 six (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 five

(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 Korea Conflict (June 27, 1950, to January 31, 1955), or the Vietnam Conflict (August 5, 1964, to March 28, 1973, May 7, 1975) and who has received a discharge under honorable conditions from such service. An additional five (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.

Workschedule. -- Designation of the periods of time during which work is performed.

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

§143-1-4. Organization.

4.1. Civil Service Commission. -- A Civil Service Commission consisting of three (3) 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 (6) years or until successors have been appointed. See section five, article six, chapter twenty-nine of the West Virginia Code.

4.2. 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 (2) members of the same political party shall serve on the Commission at the same time.

4.3. 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 (1) 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 (1) 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 (3) days in advance of the meeting. Two (2) members shall constitute a quorum for the transaction of business.

(h) Members of the Commission shall each be paid seventy-five dollars (\$75.00) for each day devoted to the work of the Commission, but not more than eighteen hundred dollars (\$1800) in any one (1) year. They shall be entitled to reimbursement for necessary traveling and other expenditures necessitated by their official duties.

4.4. 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.

(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.

4.5. 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.

§143-1-5. Classification plans.

5.1. 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.

5.2. 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.

5.3. 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 provisions 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.

§143-1-6. Compensation plan and salary regulations.

Pursuant to the provisions of subsection two, section ten, article six, chapter twenty-nine of the Code of West Virginia, the following salary regulations shall apply to employees covered by the Civil Service System.

6.1. 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.

6.2. 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 rate of pay for each grade. Periodic amendments to the pay plan may be made in the same manner.

6.3. Adopting 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.

6.4. 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 (1) 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 (6) 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.

(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 his 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.

(i) 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.

(ii) Where the salary of the incumbent coincides with a step in the new range, the salary shall remain unchanged.

(iii) 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.

(iv) Where the salary of the incumbent is above the maximum rate of the new range, the sala-

ry shall remain unchanged and the incumbent shall be ineligible for salary advancements.

(B) Lower minimum.

(i) When a class is assigned to a salary range having a lower minimum, the salaries of those incumbents which coincide with a step in the new range shall remain unchanged.

(ii) 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.

(iii) 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.

6.5. 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 (1) 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 (6)

months of pertinent experience or an equivalent amount of pertinent training for each additional step granted.

6.6. 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.

6.7. 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.

6.8. 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 two p.m. and two 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 (1/2) the scheduled hours fall between the hours of six p.m. and six 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.

6.9. 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 pro-

bationary 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 (1) step in the salary range for the class, except as provided in Subsection (f), Section 6.9 of these rules.

(e) Salary advancement interval - Except as provided in Subsection (f), Section 6.9 of these rules, the interval between salary advancements shall be at least six (6) months.

(f) Exceptionally meritorious service - In cases of an employee's exceptionally meritorious service, salary advancements of more than one (1) 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 (2) steps, including advancements for exceptionally meritorious service, in any twelve (12) month period.

6.10. Longevity increases.

(a) Eligibility - An employee with seven (7) 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 (12) 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 twelve (12) month period shall be eligible for a longevity increase.

§143-1-7. Applications and examinations.

7.1. 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 knowledge, 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 com-

petition. 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 of 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.

7.2. Notice of examinations.

(a) The Director shall give public announcement of all entrance examinations for at least fifteen (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. Notice of examinations shall be posted in important centers throughout the state and copies shall be sent to newspapers of statewide 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 Subsection (b), Section 8.2 of these rules and/or in order to conduct a continuous recruitment program as provided for in Subsection (b), Section 7.3 of these rules. In such cases, the notice and other publicity may be restricted to the places where additional eligibles are

needed. Public announcement of examinations shall specify the title and salary range of the class of position, information as to the rates of pay at which appointments are expected to be made, the duties to be performed, the minimum qualifications required, the final date on which applications will be received, 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 (1) year prior to the date of examinations, or (c) have maintained a legal residence and domicile in West Virginia for at least ten (10) years of his life, provided change to another state was made no earlier than one (1) year prior to the date of examinations. The Commission, at its discretion, may waive citizenship and residence requirements.

7.3. 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.

7.4. 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;

(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 (3) former employers state that they would not reemploy 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 (2) 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 (6) 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 (6) 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 Subsection (a), Section 14.3 of these rules.

7.5. Conduct of examinations.

(a) Written tests shall be conducted simultaneously in as many places as are necessary for the convenience of the applicants, and as are practicable for proper administration. The requirement for simultaneous conduct of examinations may be deviated from as may be found necessary by the Director to administer more effectively a continuous recruitment program as provided for in Subsection (b), Section 7.3 of these rules. 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.

7.6. 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 (5) points added to his final earned score. An additional five (5) 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.

7.7. 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.

7.8. 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 Direc-

tor shall rate or rerate the applicant's record accordingly, and make the necessary adjustments in the register. He shall also promptly notify the applicant of such rerating.

7.9. 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 (2) 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 (1) 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 makeup 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 makeup examination shall be allowed unless it is filed in writing with the Commission within ten (10)

days after the date of the original examination. Any specially administered or makeup 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.

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 thirty (30) days after the register expires. All notices of changes of address shall be filed, by applicants and eligibles, with the Director.

§143-1-8. Registers.

8.1. 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 (2) 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.

8.2. Duration of registers.

(a) The life of each register shall be no longer than three (3) 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 (3) 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 (3) 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.

8.3. 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 Subsection (a), Section 7.4 of these rules.

(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.

(4) If two (2) 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 Subsection (a), Section 14.5 of these rules.

§143-1-9. Certification of eligibles.

9.1. 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.

9.2. 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 subparagraphs. Nothing in the following subparagraphs shall be construed as altering the exhaustion point of a register as described in Subsection (a), Section 8.2 of these rules.

(1) If only one (1) position is involved, the Director shall certify and submit the names of the five (5) highest available eligibles, except as provided for in Subparagraph (b) of this section. The Director may certify more than five (5) 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 (8) times the number of positions to be filled divided by three (3).

(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 8.2 of these rules.

(b) If an eligible receives a probationary or permanent appointment, such appointment shall con-

stitute, 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.

(d) If in the exercise of his choice provided under Section 10.2 of these rules, the appointing authority passes over the name of an eligible on a register in connection with three (3) 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 (5) days or to telegraphic communication within forty-eight 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.

9.3. Local office certification.

(a) Eligibles for positions in state and local

offices shall be certified in the manner described in Section 9.2 of these rules 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 9.2 of these rules 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 (5) 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 bases.

§143-1-10. Appointments.

10.1. 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 (6) 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 (6) 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 (30) 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 (30) days after certification of available eligibles.

(d) A person employed in such a position for less than six (6) months preceding that date of affiliation shall be separated within thirty (30) 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 (30) days after certification of available eligibles: Provided, 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 Sections 10.3 and 10.4 of these rules 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.

10.2. 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 (5) highest available names on the register, as determined by Section 9.2 of these rules, 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 7.4 of these rules which objection is sustained by the Director with the approval of the Commission.

(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 (5) days in addition to the time allowed for transmission of letter and return of reply, or forty-eight (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.

10.3. 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 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 (30) days after an appropriate register has been established for the class of position and in no event for more than six (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 ap-

ply 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 10.2 of these rules 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.

10.4. 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 (3) months. Such lists, arranged according to classes of positions, shall be known as reserve lists. If the work of the agency demands the services of a person for intermittent periods, the appointing authority may select a person from a reserve list for a class of position. An appointment may be made to a vacancy in the specific class of position for which the reserve list was established, as well as to a vacancy in a lower class of position, without regard to the standing of the persons on the reserve list, and without prior clearance with the Director. An intermittent appointment to a higher class of position, however, shall not be made from any list of a lower class of position. When the reserve lists become exhausted, appointments shall be made in accordance with other provisions of this section.

(b) The Director shall also prepare lists of names of persons who have successfully passed an examination for the intermittent positions. Such lists shall consist of the names of the successful candidates arranged in the order of final scores on the examination. Selection shall be made for each position from the five (5) 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 (6) months in any twelve (12) month period beginning with the date of the original intermittent appointment.

10.5. 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 ap-

pointment without regard to other provisions of these rules. In no case shall a person be employed under emergency appointment for more than thirty (30) calendar days during any twelve (12) month period. The Personnel Officer shall immediately report each emergency appointment to the Director in writing with explanation of the nature of the emergency.

10.6. 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 of these rules. 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 six (6) months in any twelve (12) 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.

10.7. 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 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 (2) classes in a promotional series.

An established closing date, if any, for the receipt of applications shall allow sufficient time to insure 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 within five (5) working days of becoming aware of the event or within five (5) working days of when they should have become aware of the event.

§143-1-11. Probationary period.

11.1. 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 (1) 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.

11.2. Conditions preliminary to permanent appointment.

(a) Four (4) 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 fifteen (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 fifteen (15) days in advance of that date, the probationary period shall be extended fifteen (15) days from the date of the notice. The last sentence shall not apply to employees serving a twelve (12) months probationary period.

11.3. Promotions during probation. -- The serving of a probationary period shall not, of itself, present an employee from being promoted to a position in a higher class, provided he is certified from an appropriate register for such higher class of position in accordance with the provisions of Section 9 of these rules. 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.

11.4. 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, That 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 (1/3) 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.

11.5. Transfer 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 9.3 of these rules, be transferred from that local office to any other office or class for which a register exists until at least sixty (60) days after his appointment from the local area register.

11.6. 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 fifteen (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 (15) 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 ap-

pointee whose services have been terminated to the register from which he was certified, in accordance with procedure described in Section 13.8 of these rules, but the Director shall not in the future certify the name of such person to the same appointing authority from the same register.

§143-1-12. Promotions, demotions and transfers.

12.1. 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 noncompetitive examination administered by the Director.

12.2. Promotion by competitive examination.

(a) If it is determined by the appointing authority to fill vacancies in a particular class of position by promotional 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 rating 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 of these rules. 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.

12.3. Promotion by noncompetitive examination. -- If it is determined by the appointing authority to fill a vacancy by a noncompetitive promotional examination, an employee proposed for promotion shall be examined by the Director in accordance with Section 12.2 of these rules, and if found to qualify for the class will be so certified by him.

12.4. 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 thereto in writing or upon request to appear personally and reply to the appointing authority of 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 11.4 of these rules, but shall not have the right of appeal to the Commission.

12.5. Transfers.

(a) Except as otherwise provided in Section 11.5 of these rules, a transfer of an employee from a position in one organizational subdivision of an agency to a position in the same or comparable class in another organizational subdivision of the same or another agency may be made at any time by the appointing authorities concerned. In the case of interagency 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.

12.6. Posting requirements.

The vacancy posting requirements described in section 10.7 of these rules 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.

§143-1-13. Separations, tenure and reinstatement.

13.1. 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.

13.2. 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 (15) 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.

13.3. 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 (12) 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.

13.4. Reduction-in-force. -- The appointing author-

ity 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 reemployment 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.

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

13.6. 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.

13.7. 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, That 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 enti-

tled to reinstatement to their former positions or to positions of like class, seniority and pay within thirty (30) days following application: Provided, That within ninety (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 ninety (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 (1) 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.

13.8. 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, That the original register is still in effect: And provided further, That it has not exceeded a period of three (3) 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 conditions:

(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 7.4, Section 8.3 or Section 9.2 of these rules.

§143-1-14. Appeals.

14.1. Appeals from dismissal, suspension, demotion, discrimination.

(a) Right of appeal - Upon the occurrence of any one (1) 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 nonmerit based personnel action.

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

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

(d) Discovery - A broad form of discovery exists to simplify conduct of the Commission hearings. Both the appointing authority and the aggrieved employee-appellant shall have the right to inquire and receive answers from the other party or other persons concerning evidence relevant to the issues at the hearing. Both may inspect any documents or other evidence in the possession of the other party or other persons concerning evidence relevant to the issues at the hearing. Only matters which are part of the attorney work product or are otherwise privileged by law are ex-

empted 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;

(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 nonmerit 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.

14.2. 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 nonmerit 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 reemployment 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 reemployment list for employment in any position other than the one from which he has been removed. Any final action or decision taken or made hereunder shall be subject to review by the Supreme Court of Appeals if appeal is made within sixty (60) calendar days of the action or decision complained of.

14.3. Appeals 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 portion 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.

14.4. 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.

14.5. Appeal for removal from register.

(a) Appeal request - Any person whose name

has been removed from a register allegedly for reasons specified in these rules may appeal to the 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.

14.6. Appeal for denial of procedural due process rights.

(a) Raising issue - In any case where an employee is suspended for thirty (30) days or less in any twelve (12) 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 14.2 of these rules. 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 Subdivision (1), Subsection (b), Section 14.6 of these rules, the Commission may determine that the appointing authority has failed to 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 Subsection (b), Section 14.6 of these rules, may result in dismissal of the employee's appeal. For the contents of those portions of the joint statement required by Subsection (b), Section 14.6 of these rules, 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 14.2 of these rules.

14.7. 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.

14.8. 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 section sixteen, article one, chapter fifty-nine 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.

§143-1-15. Classified-exempt service.

15.1. 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.

15.2. 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.

15.3. 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.

15.4. 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.

15.5. 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 14.4 of these rules.

§143-1-16. Attendance and leave.

In compliance with article five-c, chapter twenty-one; article two, chapter two; and section ten, article six, chapter twenty-nine of the Code of West Virginia, as amended, the following regulations shall apply to classified employees.

16.1. Official holidays.

In accordance with article two, chapter two 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.

16.2. 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 the 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.

16.3. 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.

(b) Service to qualify.

(1) Qualifying service for length of service category (Section 3.1 of these rules) 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, thirty (30) day emergency, per diem or ninety (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 carry-forward amount for length of service category and may be paid in lump sum as provided in subsection 16.3(g)2 of these rules.

(g) Separation from employment - An employee who separates from employment for any reason except as described in subsection 16.3(f) of these rules 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 on per diem pay schedule approved by the Commission shall be paid according to those standard procedures.

2. Any eligible employee as defined in section one, article five, chapter five 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 subsection 16.3(f) of these rules. 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 Subdivision (2), Subsection (b), Section 16.3 of these rules may be transferable to covered agency employment.

(A) 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 twenty-four (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, That 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 (3) 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.

16.4. 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 workweek. There shall be unlimited accumulation of sick leave.

(b) Coverage.

(1) Sick leave shall not be accorded temporary, thirty (30) day emergency, ninety (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 (1) 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 during the notice period. If the employee returns to work with 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 Subsection (b), Section 16.8 of these rules.

(2) Death in the immediate family of the employee - This provision shall be understood to include three (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 twenty-four (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 (3) 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.

(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 Subdivision (2), Subsection (b), Section 16.3 of these rules may be transferable to covered agency employment.

(A) 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.

16.5. 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 (3) days.

16.6. 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.

16.7. 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, article five-c. chapter twenty-one of the West Virginia Code, as amended, and the West Virginia Department of Labor Administrative Regulations.

16.8. Leave of absence without pay.

(a) Personal leave - Upon application in writing to, and written approval of the appointing authority, a permanent, probationary, or provisional employee may be granted a leave of absence without pay for a specific period of time which normally should not exceed one (1) year. A leave of absence without pay may exceed the normal one (1) 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 (12) month period: Provided, That

(A) The employee makes application (i)

no later than fifteen (15) calendar days following the expiration of all sick leave and compensatory time, or (ii) no later than fifteen (15) calendar days following the date on which the employee filed a claim for Workers' Compensation, or (iii) 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 fifteen (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 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.

16.9. 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 United States Armed Services in time of war, national emergency or under compulsory provisions of law of the United States 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 Subsection (b), Section 13.7 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 Subsection (c), Section 13.7 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.

(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 reemployment 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 em-

employees be eligible for salary advancements.

(b) Nonsubsidized by agency - Leave of absence may be granted for educational purposes. See Subsection (a), Section 16.8 of these rules.

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.

§143-1-17. Service ratings.

17.1. 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 (12) 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.

§143-1-18. Political activities.

18.1. 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 pre-

cluding 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 on 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 West Virginia Code. Other types of partisan or nonpartisan political campaigning and management not inconsistent with the provisions of this subdivision and with the provisions of subsection (d) of this section, shall be permit-

ted.

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

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

18.2. 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.

18.3. 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.

§143-1-19. 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.

§143-1-20. Payroll certification.

(a) No state disbursing or auditing officer shall make, 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 (6) 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.

§143-1-21. Records and reports.

21.1. 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.

§143-1-22. Duties of state officers; legal proceedings to secure compliance; penalties.

22.1. Duties of state officers. -- Pursuant to section twelve, article six, chapter twenty-nine of the West Virginia Code, all state officers and employees shall comply with and aid in all proper ways in carrying out the provisions of article six, 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 six.

22.2. Legal proceedings to secure compliance. -- Pursuant to section twelve, article six, chapter twenty-

ty-nine of the West Virginia 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 six, the rules and orders thereunder.

22.3. Penalties. -- The Civil Service Commission adopts as its policy by reference thereto the provisions of section twenty-two-b, article six, chapter twenty-nine of the Code of West Virginia and will enforce the policy accordingly.

§143-1-23. Grievance procedure.

23.1. 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 nonmerit 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.

23.2. 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.

23.3. 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.

23.4. 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 (1) 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.

23.5. 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 23.1 of these rules.

(g) Paid time off. -- An employee may have the assistance of one (1) other person in the preparation and presentation of the grievance. At the request of the 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 any 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.

23.6. 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 state-

ment of the findings and recommendations 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 (1) member shall be designated by the agency head and one (1) 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; and

(E) The aggrieved employee has withdrawn or abandoned the request for grievance consideration.

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 Subsection (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.

(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 witnesses.

(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 (2) 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.

23.7. 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 be issued as does any other appeal.

23.8. 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.

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.

§143-1-24. Training.

24.1. Training. -- Each agency is responsible for providing training to employees of the agency based upon the agency's needs and resources and the em-

ployee's needs and capability. Selection of employees for training shall insure 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 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 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.

24.2. 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 coordi-

nation 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.

24.3. Apprenticeship Advisory Board. -- The Director of Personnel shall prepare and submit necessary reports to the Apprenticeship Advisory Board established in accordance with section seventeen (b), article six, chapter twenty-nine of the West Virginia Code regarding the achievements and deficiencies of the apprenticeship program.

§143-1-25. 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.

Ed. Note: Appendices A, B and C are not included in this publication.

Appendix A is the Reduction-in-Force Formula and relates to W. Va. Code 29-6-8(10).

Appendix B is a list by agency of those positions exempt from the classified service required under West Virginia Civil Service Act.

Appendix C is a reprint of United States Code and Regulations governing Intergovernmental Personnel Act Programs related to 42 USC 4728, 4763: E.O. 11589, 3 CFR 557 (1971-1975 compilation).

All of this material is available from the West Virginia Civil Service Office or the Secretary of State's Office.

Appendix B. Exempt Service (Cont'd)

7. State and local officials serving ex officio and performing incidental administrative duties or acting in an advisory capacity
8. Attorneys serving as legal counsel
9. Janitors

J. DEPARTMENT OF FINANCE AND ADMINISTRATION

1. Commissioner
2. One private secretary
3. One principal assistant or deputy
4. Policymaking positions - two (2) Deputy Commissioners
5. Part-time professional personnel engaged in professional services without administrative duties and personnel employed for less than ninety (90) working days a year
6. Janitors
7. Laborer

K. FIRE COMMISSION

1. Eleven members of State Fire Commission
2. Fire Administrator
3. Part-time professional personnel engaged in professional services without administrative duties and personnel employed for less than ninety (90) working days a year

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

1. The state Director of Health
2. One private secretary
3. One principal assistant or deputy
4. Policymaking positions:
 - (a) Director, Office of Health Planning and Evaluation
 - (b) Office of Chief Medical Examiner
 - (c) Director, Office of Community Health Services
 - (d) Director, Office of Institutional Services
 - (e) Hospital Administrators for -

Colin Anderson	Lakin
Denmar	Pinecrest
Fairmont	Andrew S. Rowan
Greenbrier	Spencer
Hopemont	Welch
Huntington	Weston

(f) Director, Office of Environmental Health Services

5. Members of the State Board of Health
6. Members of Advisory Committee
7. Members of local boards of health

Appendix B. Exempt Service (Cont'd)

8. State and local officials serving ex officio and performing incidental administrative duties or acting in an advisory capacity
 9. Janitors and laborers
 10. Part-time professional health; and related part-time health personnel employed for less than ninety (90) working days a year
 11. Seasonal employees on the fly and mosquito part of the Vector Control Program in the Kanawha-Charleston Health Department from May 15 through October 15, yearly
 12. Graduates of medical schools serving residencies or internships
 13. Prisoner help and patient help in mental institutions
 14. Part-time professional personnel engaged in professional services without administrative duties
 15. All individuals employed under the Foster Grandparent Federal Project paid on an hourly basis
 16. Personnel employed for less than ninety (90) working days a year except in the following programs:
 - (a) Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation; Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (Title III)
 - (b) Maternal and Child Health Services, Social Security Act, (Title V)
 - (c) National Health Planning and Resources Development Public Health Service Act, (Title XV)
 - (d) Health Insurance for the Aged (Medicare), Social Security Act, (Title XVIII)
 - (e) Medical Assistance (Medicaid), Social Security Act, (Title XIX)
 - (f) Grants to State for Social Services, Social Security Act, (Title XX)
 - (g) Drug Abuse Prevention, Drug Abuse Office and Treatment Act of 1972
 - (h) Developmental Disabilities Services and Facilities Construction Act as amended by Public Law 95-602
 17. State Superintendent of Schools, the Director of Health, the Commissioner of Corrections, the Commissioner of Welfare, the Director of the Division of Vocational Rehabilitation, and the Commissioner of the Department of Employment Security
 18. Members of Developmental Disabilities Council which consists of twenty-seven (27) members in Commission on Mental Retardation
 19. Students work and training under Commission in Mental Retardation
 20. Special project consultants, 120 work days (full or part-time) - Commission on Mental Retardation
- M. DEPARTMENT OF HIGHWAYS (Only certain positions designated in Governor's Executive Order are a part of the Classified Service)
1. Policymaking positions:
 - (a) State Highway Engineer
 - (b) Executive secretary
 - (c) Director, Legal Division
 - (d) Business Manager
 - (e) Assistant Commissioner for Administration

Appendix B. Exempt Service (Cont'd)

N. HUMAN RIGHTS COMMISSION

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

O. INSURANCE COMMISSION

1. Commissioner
2. One private secretary
3. One principal assistant or deputy
4. Policymaking positions:
 - (a) Legal Counsel
 - (b) Director, Rates and Forms
 - (c) Director, Consumer Services Division
 - (d) Director, Financial Conditions Division
5. Janitors
6. Part-time professional personnel engaged in professional services without administrative duties and personnel employed for less than ninety (90) working days a year

P. LABOR DEPARTMENT

1. Commissioner
2. One private secretary
3. One principal assistant or deputy
4. Policymaking positions:
 - (a) Director, Consumer Protection
 - (b) Director, Safety-Boiler
 - (c) Director, Wage and Hour
 - (d) Fiscal Director
5. Janitors
6. Part-time professional personnel engaged in professional services without administrative duties and personnel employed for less than ninety (90) working days a year

Q. LIBRARY COMMISSION

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

Appendix B. Exempt Service (Cont'd)

7. Janitors
8. Part-time regional employee

R. DEPARTMENT OF MOTOR VEHICLES

1. Commissioner
2. One private secretary
3. Deputy Commissioner
4. Policymaking positions:
 - (a) Manager, Administration
 - (b) Manager, Investigation and Control
 - (c) Manager, Operations
 - (d) Manager, Public Relations
5. Part-time professional personnel engaged in professional services without administrative duties and personnel employed for less than ninety (90) working days a year
6. Janitors
7. "Swing-Shift" consisting of four employees
8. Teletype Operator to be assigned to the West Virginia Department of Safety under their supervision, to work with the National Crime Information Center

S. DEPARTMENT OF NATURAL RESOURCES

1. Director
2. Members of advisory board
3. One private secretary
4. One principal assistant or deputy
5. Janitors
6. Resident caretakers not supervising employees of the classified services
7. Part-time professional personnel engaged in professional services without administrative duties
8. Persons employed in a professional or scientific capacity to make or conduct a temporary special inquiry, investigations, or examinations on behalf of the Legislature, or a committee thereof, an executive department or by the authority of the Governor
9. Weeder, Observer, Cabin Cleaner, Maid, and Patrolman
10. Attorneys serving as legal counsel
11. Professional personnel engaged in conducting research of demonstration projects of not more than one year's duration
12. Aide
13. Hourly employees working on short-term construction projects
14. Seasonal hourly employees not to exceed 130 working days per calendar year
15. Executive secretary, Public Land Corporation

T. PUBLIC SERVICE COMMISSION

1. Commissioners
2. Commissioners' secretaries

Appendix B. Exempt Service (Cont'd)

3. Policymaking position:

(a) Executive Director, Public Service Commission

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

U. TAX DEPARTMENT

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

(a) Deputy Tax Commissioner

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

V. VETERANS' AFFAIRS

1. Director
2. Policymaking position:

(a) Commandant, State Veterans' Home

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

W. DIVISION OF VOCATIONAL REHABILITATION

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

(a) Deputy Director, Program Operations

(b) Deputy Director, Program Administration

4. Members of advisory committees
5. State and local officials serving ex officio and performing incidental administrative duties or acting in an advisory capacity
6. Janitors

Appendix B. Exempt Service (Cont'd)

7. Part-time professional personnel engaged in professional services without administrative duties and personnel employed for less than ninety (90) working days a year
 8. Rehabilitation patients who are employed by DVR for remuneration as part of a rehabilitation training program
- X. WATER DEVELOPMENT AUTHORITY
1. Director
 2. Janitors
 3. Board members
 4. Personnel employed for less than ninety (90) working day a year
- Y. DEPARTMENT OF WELFARE
1. Commissioner
 2. One private secretary
 3. One principal assistant or deputy
 4. Policymaking positions:
 - (a) Deputy Commissioner, Operations
 - (b) Deputy Commissioner, Administration
 - (c) Deputy Commissioner, Planning and Evaluation
 5. Members of the State Advisory Board
 6. Members of the Advisory Board of Orthopedic Surgeons
 7. State and local officials serving ex officio and performing incidental administration duties or acting in an advisory capacity
 8. Janitors
 9. Part-time professional personnel engaged in professional services without administrative duties
 10. Employees of the Commodity Division working as laborers
 11. Director, Transportation Remuneration Incentive Program, Transportation Project Coordinator and Transportation Specialist of the T.R.I.P. program
- Z. WORKMEN'S COMPENSATION FUND
1. State Workmen's Compensation Commission
 2. One private secretary
 3. One principal assistant or deputy
 4. Workmen's Compensation Appeal Board and its clerical employees
 5. Claims Investigators
 6. Trial Examiners
 7. Part-time professional or technical personnel engaged in professional or consultant services without administrative duties and personnel employed for less than ninety (90) working days a year
 8. Janitor

APPENDIX C

PART 900-INTERGOVERNMENTAL PERSONNEL ACT PROGRAMS

Subpart F-Standards for a Merit System of Personnel Administration

Sec.

900.601	Statement of purpose and applicability
900.602	Uniform Guidelines on Employee Selection Procedures (1978).
900.603	Merit Principle I.
900.603-1	Recruitment.
900.603-2	Selection and appointment.
900.603-3	Career advancement.
900.604	Merit Principle II.
900.604-1	Classification and compensation.
900.605	Merit Principle III.
900.605-1	Training.
900.606	Merit Principle IV.
900.606-1	Layoff, separation, and employee evaluation.
900.607-1	Equal employment opportunity and affirmative action.
900.607-2	Employee management relations.
900.607-3	Appeals.
900.608	Merit Principle VI.
900.608-1	Political activity.
900.609	Administration of State and local personnel systems.
900.609-1	Coverage of the Standards.
900.609-2	Organization.
900.609-3	Intergovernmental cooperation.
900.609-4	Extension of personnel system.
900.609-5	Personnel records and reports.
900.610	Assuring conformity with the Standards.
900.610-1	Role of chief executive.
900.610-2	Waiver of Standards for local governments.
900.610-3	Waiver of Standards for experimental or research projects.
900.610-4	Policy basis for merit systems.
900.610-5	Review of personnel operations.
900.610-6	Compliance and assistance.
900.611	Establishing a merit requirement or policy.
900.612-620	[Reserved]

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

Subpart F-Standards for a Merit System of Personnel Administration

§ 900.601 Statement of purpose and applicability.

(a) The regulations and guides in § 900.602 through 900.620 incorporating the merit principles in section 2 of the Intergovernmental Personnel Act of 1970 (Pub. L. 91-648), are promulgated by the Office of Personnel Management of the United States Government, hereinafter the "Office of Personnel Management" to prescribe intergovernmental personnel standards on a merit basis as a condition of eligibility in the administration of various grant-in-aid and

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

other intergovernmental programs as provided in section 208(a) of the Intergovernmental Personnel Act.

(b) Proper and efficient administration of grant-in-aid and other intergovernmental programs is a mutual concern of the Federal, State and local agencies cooperating in the implementation of these programs. Proper and efficient administration requires clear definition of functions, employment of definition of functions, employment of highly qualified personnel, and development of staff morale and individual efficiency. Adequate resources are needed to staff, develop, and implement effective personnel programs. Cooperative efforts by the central personnel organization and program agencies and their personnel offices are essential in providing comprehensive personnel services. Personnel programs which are planned and administered in a timely, expeditious manner will contribute to the effective accomplishment of program objectives and maintenance of merit principles.

(c) An integral part of the intergovernmental programs is the maintenance by the State and local governments of their own merit-based systems of personnel administration for their grant-aided agencies. Federal agencies are interested in the development and continued improvement of State and local personnel systems, but under the Intergovernmental Personnel Act, Social Security Act, and other grant statutes they may not exercise authority, direction, or control over selection, assignment, advancement, retention, compensation, or other personnel actions with respect to any individual State or local employee.

(d) There is a wide range of legal, administrative, and technical approaches available to State and local governments to implement these Standards. The choice among techniques or approaches which will accomplish the results called for in these Standards is a matter for State or local government determination.

(e) These Standards provide State and local governments the flexibility to pursue innovative and diverse approaches to strengthening personnel management. They are intended to be performance oriented to the maximum extent consistent with effective administration and to limit mandatory provisions to key areas.

(f) A key feature in the administration of these Standards is the cooperative involvement of chief executives in the maintenance of merit approaches to personnel administration and the improvement of their personnel management. This enables the Office of Personnel Management to use simplified approaches to assure merit-based personnel administration in the programs covered by the Standards.

(g) Continuing application of these Standards will give reasonable assurance of a proper basis for personnel administration, promote a career service, and result in increased operating efficiency and program effectiveness. Personnel systems based on these Standards will promote equal employment opportunity, assure the fair treatment of applicants and employees in all aspects of personnel administration; and contribute to the achievement of a representative agency work force.

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

(h) These Standards emphasize the need for inclusion of all groups in our society in State and local government employment. This emphasis is based upon a general government policy of initiatives to overcome any serious underrepresentation of minorities and women in employment under the grant programs and the specific obligation to take appropriate remedial action where there has been illegal discrimination. The Standards provide a basis for firm compliance action when discrimination is not eliminated voluntarily. State and local governments are subject to Title VII of the Civil Rights Act of 1964; the Intergovernmental Personnel Act of 1970; the State and local Fiscal Assistance Act of 1972, as amended and (in many cases) Executive Order 11246, as amended. Under all of those authorities, such governments are obliged to conduct their activities without discrimination and specifically are obligated to comply with the Uniform Guidelines on Employee Selection Procedures (1978), (43 FR 38290) (Friday, August 25, 1978). The Uniform Guidelines and therefore these Standards require that all selection procedures which have an adverse impact on any racial sex or ethnic group must be validated, modified or changed in accordance with the Guidelines or otherwise be demonstrated to be in accord with Federal law. These standards are consistent with the Guidelines, and with the Policy Statement on Affirmative Action for State and Local Government Agencies, adopted by the Equal Employment Opportunity Coordinating Council (41 FR 38814 September 13, 1976).

(i) Within these standards, means are provided for the implementation of national policies for structuring jobs, training and employing the handicapped and disadvantaged, and implementing Congressional and related State employment and rehabilitation programs.

(j) In conjunction with the Office of Personnel Management, the Federal grantor and other agencies are involved to the maximum extent feasible in the evaluation and maintenance of merit based personnel administration. In cases where elements of the personnel system or the administration of the system contain deviations from the Standards, the Office of Personnel Management provides consultation and technical assistance to State and local governments to obtain appropriate revisions. In matters involving serious deviations from the provisions of the Standards, the Office of Personnel Management submits recommendations to and coordinates necessary action by the Federal agencies. The Federal agencies attempt to avoid using the sanction of withdrawing Federal grant funds and place their emphasis on negotiation and technical assistance to achieve the required substantial conformity with these Standards. Where necessary, however, enforcement actions are taken in accordance with the regulations of the specific grant or other programs. (See § 900.610)

(k) In order to assist State and local governments in maintaining their personnel systems under these Standards, technical consultation services will be provided to the extent resources are available.

(l) The provisions under § 900.602 through 900.620 identified as requirements are the regulatory provisions of these Standards.

(m) The general requirements are based on the six merit principles contained in section 2 of the Intergovernmental Personnel Act of 1970. They are followed

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

by more explicit requirements which relate to individual provisions of the merit principles.

(n) There are two types of provisions in the "Guide" sections:

(1) Interpretations of the intent of the requirements. While these are not regulations, they explain policies, practices, or other actions needed to comply with the regulations.

(2) Recommendations for desirable methods of personnel administration and informational materials. These are printed in italics. State and local governments are encouraged to use these methods but they are not requirements of the Standards.

(o) The six merit principles enunciated by Congress in 1971 as the basic policy and objectives of intergovernmental personnel programs are as follows:

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

(2) Providing equitable and adequate compensation;

(3) Training employees, as needed, to assure high-quality performance;

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

(5) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, or religious creed and with proper regard for their privacy and constitutional rights as citizens; and

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

§ 900.602 Uniform Guidelines on Employee Selection Procedures (1978). -

(a) Requirement. The Uniform Guidelines on Employee Selection Procedures (1978) are a requirement of these Standards. Where adverse impact results from selection procedures which are used as a basis for any employment decision, they must be validated, modified, or changed in accordance with the Guidelines or otherwise demonstrated to be in accord with Federal law.

§ 900.603 Merit Principle I.

(a) General Requirement. Recruiting, selecting, and advancing employees will be on the basis of their relative ability, knowledge, and skills,

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

including open consideration of qualified applicants for initial appointment.

§ 900.603-1 Recruitment.

(a) Requirement. Recruiting efforts will be planned and carried out in a manner that assures open competition. Special emphasis will be placed on recruiting efforts to attract minorities, women or other groups that are substantially underrepresented in the agency work force to help assure they will be among the candidates from whom appointments are made.

(b) Guide. The recruiting program needs to be based upon planning to meet current and projected agency work force needs. Recruitment needs to be tailored to the number and type of positions to be filled and to labor market conditions. The recruiting efforts of the central personnel organization and the program agencies ought to be coordinated and carried out in a timely manner so as to permit successful competition with other employers.

§ 900.603-2 Selection and appointment.

(a) Requirement. (1) Selection procedures including appropriate ranking for entry to the career service will be job related and will maximize validity, reliability, and objectivity.

(2) Selection for entrance to the career service normally will be through open competition. Appointments to positions in the career service will be made on the basis of merit by selection from eligible lists established in accordance with the provisions of these Standards on recruitment, selection, and equal employment opportunity.

(3) Certification procedures will be established by State and local governments to insure that appointing officials review and give equitable consideration to an appropriate number of eligibles based on whatever ranking system is used on the list when making a selection for initial entry to the career service.

(4) Competition for appropriate positions may be limited to facilitate employment of those with a substantial physical or mental impairment, the economically disadvantaged or participants in employment or rehabilitation programs authorized by Congress or related programs authorized by State legislatures.

(5) In those occasional instances where there is evidence that open or limited competition is not practical, noncompetitive appointments may be made.

(6) Job related minimum requirements for entrance to a class will be established wherever they are practical. They will be met by all successful candidates examined, appointed, and promoted.

(7) Permanent appointment for entry to the career service will be contingent upon satisfactory performance by the employee during a reasonable, time limited probationary period.

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

(8) Temporary, provisional, or other nonstatus appointments will not be used as a way of defeating the purpose of the career service and will have a reasonable time limit. If lists of eligibles are available, they normally will be used for filling temporary positions. Short term emergency appointments may be made without regard to the other provisions of this section to provide for maintenance of essential services in an emergency situation where normal procedures are not practical.

(b) Guide. (1) More than one selection procedure should be used where that is necessary to measure the important skills, knowledges, and abilities needed for entry to a job. Any examination procedures including appropriate ranking utilized in career advancement or promotion programs need to be job related and to maximize validity, reliability and objectivity to the same extent as selection procedures for initial appointment. Adequate job analysis needs to be conducted to insure job relatedness of selection procedures.

(2) State and local governments have wide latitude in determining a manageable number of eligible candidates to refer for consideration for entrance to the career service. The procedures need to provide for selection based on relative ability, knowledge, and skills of the eligibles; for fair treatment without regard to an eligible's race, color, religion, sex, national origin, political affiliation, age, handicap, or other nonmerit factors except where provided for by Federal law; for the protection of the eligibles' privacy and constitutional rights; and for the equitable consideration of all eligibles.

(3) Provisions which would generally result in appointment from the whole list of eligibles or its equivalent would not meet the requirements of these Standards. Any one of a variety of approaches providing for appointment from among the most qualified available eligibles from lists meets the requirements of this section. For example, all candidates from a range of highest scores could be considered, or candidates could be ranked by broad groups, and appointments could be made first from a best qualified category, and when it is substantially depleted, from a well qualified category, and third, from a qualified category or according to an equivalent system.

(4) Handicapped persons who have, have had, or are regarded as having a physical or mental impairment which substantially limits one or more major life activities, may be hired through limited competition or non-competitive procedures.

(5) Noncompetitive procedures may be used where job related ranking measures are not practical or are not appropriate. They may be used for classes where the method of selection would have minimum impact on proper and efficient administration of the program such as unskilled positions or types of positions frequently exempted from merit systems.

(6) Minimum qualification and performance requirements and duties may be appropriately modified to permit the appointment and promotion of trainees to positions normally filled at full proficiency level.

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

(7) State and local governments are encouraged to provide for entry through cooperative education, work study, internship, and similar programs.

§ 900.603-3 Career advancement.

(a) Requirement. State and local government personnel systems can use a wide variety of approaches in promoting employees to high level positions so long as they consider the eligible permanent employees in the agency or the career service and adequately assure that all persons promoted are qualified for the position.

(b) Guide. (1) The central personnel agency needs to certify to the eligibility of persons selected for promotion, or if that authority is delegated to operating agencies, it should be subject to an appropriate post audit by the central personnel agency.

(2) Systematic promotion methods are encouraged. They need to provide for competition among qualified career employees at appropriate points in the career advancement system. In addition, provisions need to be made to bring persons into the career service through open competition at higher levels where this will provide abilities not available among career employees, enrich the career service, or contribute to improve employment opportunities for underrepresented groups.

(3) Systems need to be established to provide improved opportunities for upward mobility through training, education, and career development assignments.

§ 900.604 Merit Principle II.

(a) General Requirement. Equitable and adequate compensation will be provided.

§ 900.604-1 Classification and compensation.

(a) Requirement. Classification and compensation plans will be maintained on a current basis. To maintain a high quality public work force and to assure equitable compensation for comparable work, the compensation plan will take into account the responsibility and difficulty of the work, the compensation needed to compete in the labor market and to stay in proper alignment with other agencies of the government, and other pertinent factors.

(b) Guide. (1) Classification plans need to be based on job analysis and should be utilized for decision making on compensation, selection, employee development, career advancement, upward mobility, and other personnel program activities. State and local government personnel systems can use a wide variety of job evaluation methodologies.

(2) Collective negotiation or meeting and conferring with employee organizations to achieve equitable and adequate compensation can be consistent with these Standards.

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

(3) In those programs in which States are responsible for supervision of local administration, States may determine whether local agency compensation will be governed by: a plan of the local government which covers other local agencies; a plan of the State which covers local grant-aided agencies; or a plan of the State which covers the agency responsible for State administration of Federal grants.

§ 900.605 Merit Principle III.

(a) General Requirement. Employees will be trained as needed to assure high-quality performance.

§ 900.605-1 Training.

(a) Guide. In addition to providing training to improve performance, State and local governments should also provide training as needed to prepare employees for more responsible assignments and to implement affirmative action plans for equal employment opportunity. Training programs should include systematic methods for assessing training needs, providing training to meet priority needs, selecting personnel for training and evaluating the training provided.

§ 900.606 Merit Principle IV.

(a) General Requirement. Employees will be retained on the basis of the adequacy of their performance and provision will be made for correcting inadequate performance and separating employees whose inadequate performance cannot be corrected.

§ 900.606-1 Layoffs, separations, and employee evaluations.

(a) Requirement. Employees who have acquired permanent status will not be subject to separation except for cause or such reasons as curtailment of work or lack of funds. Procedures will be established to provide for the transfer, demotion, or separation of employees whose performance continues to be inadequate after reasonable efforts have been made to correct it. Retention of employees in classes affected by reduction in force will be based upon systematic consideration of type of appointment and other relevant factors.

(b) Guide. (1) Employees to be evaluated periodically on a systematic and job related basis to provide needed information for supervisors to assess the adequacy of individual employee performance in relation to performance requirements, for employees to recognize their own performance improvement needs, and as a basis for personnel actions including promotion, recognizing or rewarding superior performance, and correcting inadequate performance or separating employees in cases where inadequate performance cannot be corrected.

(2) No employee should be subject to separation or other disciplinary action for disclosure, not prohibited by law, of violations of laws, rules, or regulations or other improper actions. Mechanisms to protect such

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

employees should include procedures by which they may report wrong doing or inefficiency to an independent body, prohibitions and protections against reprisals, and an appeal procedure for employees who suffer reprisal because of their disclosures.

(3) Quality of performance and length of service should be taken into account in reduction in force systems.

§ 900.607 Merit Principle V.

(a) General requirement. Fair treatment of applicants and employees in all aspects of personnel administration without regard to race, color, religion, sex, national origin, political affiliation, age, handicap, or other nonmerit factors and with proper regard for their privacy and constitutional rights as citizens will be assured.

§ 900.607-1 Equal employment opportunity and affirmative action.

(a) Requirement. (1) Equal employment opportunity will be assured for all persons by those actions appropriate to overcome the effects of past or present practices, policies or other barriers to equal employment opportunity. Affirmative action may include, but is not limited to, outreach recruitment to attract minorities, women, and other groups to apply, especially where they are substantially underrepresented; removal of artificial barriers to entry and advancement within the system; affirmative action to eliminate exclusion of any person from full and fair consideration for appointment or promotion; enforcement of prohibitions of discrimination and impartial resolution of allegations of discrimination. (See the Equal Employment Opportunity Coordinating Council's Policy Statement on Affirmative Action Programs for State and Local Government Agencies, included in Appendix B.)

(2) Affirmative action programs consistent with merit principles will be developed and implemented for personnel services provided to and personnel administration within the grant-aided agencies. They will include identification and elimination of artificial barriers to equal employment opportunity. They will also include agency work force analyses to determine whether percentages of minorities and women employed in various job categories are substantially similar to percentages of those groups available in the relevant labor force who possess the basic job related qualifications. Where the percentages of minorities and women are not substantially similar, employment procedures will be analyzed to determine the cause of underrepresentation. The program will include development of a systematic action plan that is consistent with the merit principles and include the development of goals and timetables formulated to correct any substantial disparities or other problems identified in the analyses prescribed above.

(3) Periodic evaluation of results to assess the effectiveness of the affirmative action programs in achieving affirmative action goals on a timely basis will be undertaken.

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

(4) Prohibitions against discrimination consistent with the Civil Rights Act of 1964 as amended (42 U.S.C. § 2000e et seq.), the Rehabilitation Act of 1973 as amended (29 U.S.C. § 791 et seq.), the Age Discrimination in Employment Act of 1967 as amended (29 U.S.C. 621 et seq.), the Equal Pay Act of 1963 (29 U.S.C. § 206(d)(1)) and other relevant statutes will be established by the State and local governments and enforced by them.

(b) Guide. (1) To help assure equal employment opportunity, a personnel system needs to prohibit the following practices where based on race, color, religion, sex, national origin, political affiliation, age, handicap or other nonmerit factors:

(i) Failing or refusing to hire or discharging any individual, or otherwise discriminating against any individual with respect to compensation, terms, conditions, or privileges of employment;

(ii) Limiting, segregating, or classifying employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or which would otherwise adversely affect an individual's status as an employee;

(iii) Failing or refusing to refer a candidate for employment;

(iv) Causing or attempting to cause an employer to discriminate against an individual;

(v) Discriminating against an individual in any other aspect of personnel administration.

(2) Federal law provides for an exception from the general rule prohibiting discrimination in cases in which religion, sex, national origin, or age is a bona fide occupational qualification for employment. However, court cases and other interpretations indicate that there are few, if any, jobs to which this exception can be applied in programs covered by these Standards.

(3) Goals and timetables need to be flexible and include both numerical targets and action steps.

(4) Employment selection procedures need to reflect the job related knowledges, skills, and abilities of handicapped applicants or employees rather than their impairments.

(5) In developing affirmative action plans, agency work force analyses and problem identification normally need to be based upon the percentage of qualified persons by race, sex, and ethnic group available in the relevant labor force where such data are available. Where these data are not available, total labor force may be used for this purpose. The Office of Personnel Management will review State or local government analyses of their organization's work forces by individual job classifications or by classification series or occupational grouping, as appropriate.

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

(6) Systems which collect data on race, sex, or ethnic group without self identification by employees or applicants are encouraged under Title VII of the Civil Rights Act. However, self identification may be necessary where all other means of gathering these data are not feasible, as in unassembled examinations. Disclosure of their own race, sex, or ethnic group by employees or applicants should be voluntary. The applicant or employee should be informed clearly of the nondiscriminatory purpose, necessity to comply with Federal and other recordkeeping requirements, and precautions which will be taken to assure nondiscriminatory use of such information. Data on race, sex, and national origin should be collected and maintained separately from individual application and personnel forms.

(7) State and local governments are encouraged to involve employee organizations in the formulation of affirmative action plans.

§ 900.607-2 Employee management relations.

(a) Guide. (1) The proper and efficient administration of Federal grant-in-aid programs by State and local governments and the well-being of the employees of such programs require effective communication and an orderly and constructive relationship between employees and management officials. Collective negotiations, meeting and conferring with employee organizations, or other methods can make positive contributions to the communications process by providing employees an opportunity to participate in the formulation of policies and practices affecting the conditions of their employment.

(2) State and local government policies need to delineate the rights of employees of programs covered by these Standards to form, join, and assist an employee organization or to refrain from any such activity, freely and without fear of penalty or reprisal.

(3) To facilitate effective participation in formulation of personnel policies by employees, State and local governments which establish a formal framework need to address all aspects of the labor management relationship and ought to indicate the rights and obligations of both management officials and employees; subjects for negotiating or meeting and conferring; criteria for recognition of employee organizations, determination of units, and resolution of impasses; and unfair labor practices and standards of conduct.

(4) The objectives of these provisions may be achieved through legislative enactment, promulgation of an executive order by the chief executive, or through the rules and regulations of the agency directly responsible for administering a program covered by the Standards.

(5) The maintenance of a system of personnel administration based on merit principles needs to be assured in any collective negotiation or meet and confer system established.

(6) In the interest of effective administration of the Standards, the Office of Personnel Management has established procedures to insure

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

that affected employee organizations are as fully informed of their administration as is feasible. State agencies which are responsible for supervising local compliance with these Standards should adopt similar procedures. State and local governments need to adopt their own internal procedures to insure that affected employee organizations are as fully informed as feasible on administration of the Standards.

§ 900.507-3 Appeals.

(a) Requirement. In the event of separation or demotion, State and local governments will provide permanent employees with the right to appeal through an impartial process that may be recommendatory to or enforceable on the appointing authority. In addition, State and local governments will provide for appeals of alleged discrimination in any personnel action on the basis of race, color, religion, sex, national origin, political affiliation, age, handicap or other nonmerit factors by any applicant or employee through an impartial process that will result in timely, enforceable decisions.

(b) Guide. An impartial grievance procedure may satisfactorily meet the above requirements but adequate appeal provisions need to be maintained for applicants and any employees not covered by the grievance procedures. State and local government personnel systems need to include an impartial procedure to process all types of employee grievances. To the maximum extent possible, grievance procedures should include steps to resolve discrimination and all other types of employee grievances without recourse to formal appeals procedures.

§ 900.608 Merit Principle VI.

(a) General Requirement. State and local governments will inform their employees of their political rights and prohibited practices under the Hatch Act.

§ 900.608-1 Political activity.

(a) Guide. (1) The Hatch Act, as amended, 5 U.S.C. 1501-1508, prohibits certain types of political activity on the part of State and local government employees whose principal employment is in a Federally-funded program, irrespective of whether their positions are covered by these Standards.

(2) State and local governments ought to adopt and themselves enforce provisions on political activity which are consistent with the Federal Hatch Act and which will facilitate their effective control of prohibited political activity by employees.

(3) State and local government policies on political activity need to insure that all employees have the right to express their views as citizens, to pursue their legitimate involvement in the political system, and to vote; that employees not engage in or be subject to coercion for political purposes, and not seek candidacy for public office in a partisan election.

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

§ 900.609 Administration of State and local personnel systems.

(a) General. This section consists of regulations and guides on the administration of State and local personnel systems.

§ 900.609-1 Coverage of the Standards.

(a) Requirement. (1) These Standards are applicable to all State and local personnel, except those exempted in this section, engaged in the administration of grant-in-aid and other intergovernmental programs under Federal laws and regulations requiring the establishment and maintenance of personnel standards on a merit basis. To help assure the recruitment, selection, and advancement of highly qualified personnel and continuity of program administration, career coverage will be provided by State and local personnel systems for all non-exemptible management, supervisory, technical, and other positions in grant-aided programs, irrespective of the source of funds for their salaries.

(2) To assure proper organizational responsiveness, appropriate numbers of top level positions may be exempted if they determine and publicly advocate substantive program policy, provide legal counsel, or are required to maintain a direct confidential working relationship with a key exempt official. State and local governments have flexibility in determining whether top level policy positions will be filled on a career or exempt basis so long as the number of positions filled on an exempt basis does not exceed the number in the agency which may be exempt on the basis that they determine and publicly advocate substantive program policy. Unskilled laborers, bona fide part-time positions, temporary positions established for the purpose of conducting a special project, study, or investigation, and severely handicapped persons may be exempted if such exemption would not have an undesirable impact on proper and efficient administration or on the achievement of equal employment opportunity.

(b) Guide. (1) State and local governments may exempt from the application of these Standards members of boards or similar bodies who do not perform administrative duties as individuals; officials serving ex officio and performing incidental administrative duties; the executive heads of agencies and positions reporting directly to them which are primarily responsible for both substantive program policy determination and its public advocacy; confidential assistants to the above positions; and attorneys serving as legal counsel or conducting litigation.

(2) Normally, positions involving only policy development may not be exempted. Generally, positions involving policy determination and public advocacy that are engaged in the direction of line operations may be exempted from the Standards only when they report directly to the executive head of an agency. An exception to this reporting relationship may be made within the primary components of large multiprogram agencies where the heads of such primary components and positions reporting directly to them may also be exempted.

(3) The exclusion of management positions from collective bargaining is not a basis for exemption of such positions from the merit system.

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

(4) Upon exemption of a position from the career service, incumbents with permanent status retain their career service tenure or are appropriately compensated for its loss.

(5) State and local governments are encouraged to develop systems for assigning career management employees to exempt policy determining and advocacy, confidential and other key positions without tenure in such a position but with reinstatement rights to a career service position. These systems allow chief executives to place highly qualified career employees in key jobs without sacrificing responsiveness to new program direction or to the chief executive.

(6) Job related qualification requirements should be established for positions exempted from these standards.

§ 900.609-2 Organization.

(a) Requirement. (1) A State or local government's merit system organization will provide for impartial administration.

(2) At the option of the State, a local government which does not have a jurisdiction-wide personnel system meeting these Standards may elect one of the following:

(i) To cover grant-aided programs under a personnel system serving other grant-aided agencies covered by the Standards, such as a system serving State agencies, another city or county, or a group of local jurisdictions;

(ii) To cover grant-aided programs using a personnel system which is not jurisdiction-wide where this is warranted as the basis for future development of a jurisdiction-wide system.

(3) Where no State agency is responsible for local government administration, approval of the Office of Personnel Management will be required for coverage by a personnel system under paragraph (i) or (ii).

(b) Guide. (1) Any one of a variety of personnel system organizations covering substantially all employees in a State or local government or the State grant-aided agencies can meet the requirements of this section. Personnel organizations need to be administered by a qualified executive responsible to the chief executive, a top official, or a board or commission. Staff ought to be appointed on the basis of merit and serve in accordance with the provisions of the personnel system.

(2) The personnel management function needs to be provided with sufficient staff and other resources to enable it to give effective personnel administration support to the grant-aided agencies.

(3) In the interest of economy, efficiency, and effectiveness, a single personnel system is needed to cover all of the grant-aided agencies in a jurisdiction subject to these Standards.

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

(4) Examples of methods which State governments may adopt to help maintain impartial administration include:

(i) Administration in accordance with laws, rules and regulations open to public scrutiny;

(ii) Establishment of non-partisan or bipartisan boards or commissions with oversight, investigation, or appeal functions;

(iii) Maintenance of impartial grievance or appeal systems which provide for disqualification because of conflicts of interest of hearing examiners or others who decide appeals from employees;

(iv) Appointment of the staff of the personnel agency on the basis of merit with their service in accordance with the provisions of the merit system;

(v) Employment of the best professionally qualified director available after widespread recruitment;

(vi) Administration by a central personnel agency or by other agencies with a post audit by a central agency with effective enforcement authority to correct improper actions;

(vii) Prohibition of consideration of political opinions or affiliations in examination for or appointment to a position, promotion, or in any other personnel action.

§ 900.609-3 Intergovernmental cooperation.

(a) Guide. To facilitate public service mobility and maximum utilization of personnel resources, provisions should be made for: cooperative interjurisdictional recruiting, examining, certifying, selection, training, research and development, and other personnel functions; adding to registers of eligibles the names of applicants with eligibility on comparable examinations in other jurisdictions; appointing employees on the basis of their permanent career status in another jurisdiction, with maximum protection of their retirement and other benefits.

§ 900.609-4 Extension of personnel system.

(a) Requirement. Employees with permanent status under a personnel system meeting these Standards will retain comparable status if the employing agency is placed under the jurisdiction of another personnel system.

(b) Guide. As determined by the State, upon the initial extension of the personnel system to a program, incumbents may obtain permanent status through an open competitive or qualifying examination, or if they have a specified period of satisfactory service in the agency, at its discretion, they may be granted permanent status. If they do not pass a required examination, employees may be retained in the positions in which they have incumbency preference without acquiring the rights of career status.

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§ 900.609-5 Personnel records and reports.

(a) Requirement. (1) Appropriate personnel records will be maintained to assure the proper administration of the personnel system and covered agency personnel programs. Periodic reports, such as statistical reports on personnel administration, will be prepared as required by the Office of Personnel Management to indicate compliance with applicable State and local requirements and these Standards.

(2) Each covered State or local agency and each affected State or local merit system agency shall permit the Office of Personnel Management during normal business hours to review its books, records, and other sources of information as may be required to ascertain compliance with these Standards.

(3) Each covered State or local agency shall furnish annually to the Office of Personnel Management completed report OPM Form 1129. Review of Personnel Operations-Grant-Aided Agency, and other reports as may be required to show compliance with these Standards.

(4) Each affected State and local merit system agency shall furnish annually to the Office of Personnel Management completed report OPM Form 1128, Review of Personnel Operations-Merit System Agency.

(b) Guide. State and local governments should provide employees with opportunities to review information in their employee files to assure the accuracy of that information. Appropriate limitations on access to employee records should be established in order to protect the privacy of public employees.

§ 900.610 Assuring conformity with the Standards.

(a) General. This section consists of regulations on administration of these Standards.

§ 900.610-1 Role of chief executive.

(a) Requirement. (1) Certification of agreement by the chief executive of the jurisdiction (hereinafter "certification") to maintain a system of personnel administration in conformance with these Standards is an eligibility requirement in grant or other programs to which personnel standards on a merit basis are applicable.

(2) The Governor shall designate an agency or agencies which will be responsible for supervising local compliance with these Standards. This agency will obtain certifications from local chief executives. The States must maintain these certifications and make them available to the Office of Personnel Management on request.

(3) Where no State agency is responsible for local government administration, local governments can transmit all required certifications and applications for waiver provided for in these regulations directly to the appropriate

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

regional office of the Office of Personnel Management.

(4) Certifications are to be submitted by the Governor to the Office of Personnel Management within six months of the effective date of issuance of these Standards.

(5) Subsequent certifications will be submitted within 90 days after they have been requested, to the appropriate Office of Personnel Management regional office or the State agency responsible for local administration for the following reasons:

(i) Upon change in incumbent chief executives;

(ii) Upon initial application for a Federal grant-in-aid or eligibility for other intergovernmental programs;

(iii) Upon passage of significant new personnel legislation affecting a State's merit system;

(iv) Upon major reorganization or restructuring of the personnel system of the jurisdiction; or,

(v) Upon determination that there exist major problems or apparent significant departures from the principles.

(6) A chief executive may indicate that grant-aided or other programs not previously covered by these Standards are not currently in compliance with the Standards and submit a specific action plan and reasonable timetable for achieving compliance for approval by the Office of Personnel Management or State agency responsible for compliance.

(7) Before signing a certification, a chief executive may request advice and assistance from the Office of Personnel Management or State agency responsible for local administration in order to determine whether the agencies under the chief executive's jurisdiction are in compliance with the Standards. Such assistance and or negotiations may continue beyond the specified time requirement for the chief executive's certification. In the absence of such a certification, temporary assurance as to compliance with the Standards may be effected by:

(i) Obtaining certification from the heads of those State and local agencies which are required to have merit personnel systems as a condition of Federal grant-in-aid or other intergovernmental programs; or

(ii) The Office of Personnel Management regional office or State agency responsible for compliance may conduct an advance personnel management evaluation of those agencies subject to the Standards.

§ 900.610-2. Waiver of Standards for local government.

(a) Requirement. (1) Chief executives of local governments with fewer than twenty-five employees in all activities covered by these Standards may

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apply to the State agency designated by the Governor to supervise local compliance with the Standards for a waiver of the requirements in the Standards on the basis that compliance is impractical. Normally, if any State or local merit system meeting these Standards has jurisdiction over the local programs, it will be considered practical to continue to apply the Standards in those local programs. Applications for waivers are subject to approval by appropriate State grant-aided or other agencies responsible for local program administration, and if endorsed by them must be forwarded to the appropriate Office of Personnel Management regional office for final approval.

(2) The chief executive of a jurisdiction which requests a waiver as provided above must certify that personnel administration in the grant-aided programs will be consistent with the six merit principles in the Intergovernmental Personnel Act. Evaluation of local personnel administration in such agencies will be conducted by the State agency supervising local compliance with the Standards and will be initiated only when a complaint has been received alleging practices inconsistent with the merit principles. Where there is no such State agency, such evaluations will be conducted by the Office of Personnel Management. Subsequent certification may be required in accordance with the provisions of section 900.610-1.

§ 900.610-3 Waiver of Standards for experimental or research projects.

(a) Requirement. (1) The Office of Personnel Management, at the request of the Governor or of the Governor's designee(s) on behalf of the State or its local governments, may waive for a State or local government for up to a two-year period, with the possibility of extension, any one or a combination of the provisions of these Standards, for experimental or research projects designed to improve merit systems or their operations. Upon completion, the project will be evaluated to determine whether its objectives have been achieved.

(2) Requests for such waivers should be sent to the appropriate regional office of the Office of Personnel Management. Requests for waivers from local jurisdictions will be submitted by the local chief executive to the State agency designated by the Governor to supervise local compliance with the Standards. Any recommendation by the State for approval of a waiver from a local government shall be submitted to the appropriate Office of Personnel Management regional office for approval before implementation.

§ 900.610-4 Policy basis for merit system.

(a) Requirement. (1) Laws, rules, regulations, policy statements and negotiated agreements impacting on a personnel system subject to these Standards must provide for a system of personnel administration based on merit. This policy basis and the administration of the personnel system will be subject to review for substantial conformity to the Standards.

(2) Changes in the policy basis will be made available promptly to the Office of Personnel Management or the State agency responsible for local administration, as appropriate, on an informational basis so that the jurisdiction may be advised regarding any problems which could affect the

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jurisdiction's ability to implement the certification of the chief executive.

§ 900.610-5 Review of personnel operations.

(a) Requirement. (1) The Office of Personnel Management, in cooperation with the appropriate Federal agency, shall make or arrange for onsite reviews of each State merit system agency and other affected State agencies to determine compliance with the Standards, except that reviews of the latter agencies by the State merit system agency or other appropriate organization, at the discretion of the Office of Personnel Management may be accepted in lieu of Office of Personnel Management reviews.

(2) The agency designated by the Governor to supervise local compliance with the Standards, in consultation with the appropriate regional office of the Office of Personnel Management, shall make or arrange for onsite reviews of the operations of the merit system for and personnel program of each local agency to determine compliance with the Standards and will take appropriate steps to insure corrective action when necessary.

§ 900.610-6 Compliance and assistance.

(a) Requirement. (1) The Office of Personnel Management, when corrective action is required, will negotiate with the appropriate State or local agency to achieve compliance and will coordinate its activities with the appropriate Federal agency.

(2) The Office of Personnel Management shall request the appropriate Federal agency to render assistance when required to achieve compliance.

(3) The Office of Personnel Management, when there is a question of substantial conformity with the Standards after negotiation or the rendering of necessary technical assistance, shall forward its findings to the appropriate Federal agency, recommending that grant termination procedures or other appropriate action be initiated, in accordance with that Federal agency's regulations.

§ 900.611 Establishing a merit requirement or policy.

(a) Requirement. (1) Federal agencies may adopt, only with prior approval of the Office of Personnel Management, regulations that require as a condition for receiving Federal financial or other assistance or otherwise participating in an intergovernmental program, that State and local agencies establish and maintain a personnel system that conforms with a Federal merit requirement or policy. To avoid inconsistent and conflicting approaches to State and local governments, normally such merit requirements or policies should consist of application of these Standards pursuant to Section 208 of the Intergovernmental Personnel Act of 1970 as amended by Section 602(a) of the Civil Service Reform Act of 1978.

(2) The following regulations shall be adopted by Federal agencies that wish to require that State and local agencies establish and maintain a

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personnel system that conforms with these Standards:

Methods of personnel administration will be established and maintained in public agencies administering the program in conformity with the Standards for a Merit System of Personnel Administration, 5 CFR 900 which incorporate the Intergovernmental Personnel Act Merit Principles (Public Law 91-648 Section 2, 84 Stat. 1909), prescribed by the Office of Personnel Management pursuant to Section 208 of the Intergovernmental Personnel Act of 1970 as amended.

(3) For grant or other programs that are State supervised and logically administered, insert the following after the word "administering" in the above: "or supervising the administration of."

(4) No variation from the language contained in paragraphs 2 and 3 of this section may be used without approval by the Office of Personnel Management.

(5) The Office of Personnel Management shall provide, within available resources, consultation and technical advice and assistance to State and local jurisdictions to aid them in complying with the Standards. In the absence of available resources, the Office of Personnel Management may provide technical assistance on a reimbursable basis to Federal, State, and local agencies administering programs covered by these Standards to facilitate compliance with the Standards.

§ 900.612-620. Reserved

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

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

Program, Legislation, and Statutory Reference

Food Stamp, Food Stamp Act of 1964, as amended; 7 U.S.C. § 2020(e)(6)(B).

Drug Abuse Prevention, Drug Abuse Office and Treatment Act of 1972, § 409, on March 21, 1972; 21 U.S.C. § 1176(e)(8).

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

Medical Facilities Assistance (Construction and Modernization), Public Health Service Act (Title XVI), as amended by the National Health Planning and Resources Development Act of 1974, § 1603, on January 2, 1975; 42 U.S.C. § 300o-2(b)

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

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

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

Maternal and Child Health Services/Crippled Children Services, Social Security Act (Title V), as amended by the Social Security Act Amendments of 1939, § 503, on August 10, 1939; 42 U.S.C. § 705(a)(3)(A).

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

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

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

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

Grants to States for Social Services, Social Security Act (Title XX), as amended by the Social Services Amendments of 1974, § 2003, on January 4, 1975; 42 U.S.C. § 1397b(d)(1)(D).

Comprehensive Mental Health Services (Services and Facilities), Community Mental Health Centers Act (Title II), as amended by the Community Mental Health Centers Amendments of 1975, § 303, on July 29, 1975; 42 U.S.C. § 2689t(a)(1)(D).

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

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

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Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (Title III), § 303, on December 31, 1970; 42 U.S.C. § 4573(a)(5).

Civil Defense Personnel and Administrative Expenses Civil Defense Act of 1950 (Title II), as amended by Public Law 94-361, § 804, on July 14, 1976; 50 U.S.C. App. 2286(a)(4).

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

Program, Legislation, and Regulatory Reference

Occupational Safety and Health Standards, Williams-Steiger Occupational Safety and Health Act of 1970; 29 CFR § 1902.3(h).

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

Child Welfare Services, Social Security Act (Title IV-B), especially as amended by the Social Security Amendments of 1967, on January 2, 1968; 45 CFR § 220.49(c).

Developmental Disabilities Services and Facilities Construction, Developmental Disabilities Services and Facilities Construction Act, as amended by Public Law 95-602, on November 6, 1978, 45 CFR § 1386.21.

PART III: The following programs have a personnel requirement which may be met by a merit system which conforms to the Standards for a Merit System of Personnel Administration:

Program, Legislation, and Reference

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

Vocational Rehabilitation Services, Rehabilitation Act of 1973 (Title I), as amended; 45 CFR § 1361.15(b).

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

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

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APPENDIX B TO THE STANDARDS FOR A MERIT SYSTEM OF PERSONNEL ADMINISTRATION UNIFORM GUIDELINES ON EMPLOYEE SELECTION PROCEDURES (1978)

NOTE: These guidelines are issued jointly by four agencies as follows:
Civil Service Commission, Department of Justice, Equal Employment Opportunity
Commission, Department of Labor.

For official citation see section 18 of these guidelines.

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APPENDIX A

REDUCTION-IN-FORCE FORMULA

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

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

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

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

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

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

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

Appendix A. Reduction-in-Force (Cont'd)

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

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

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

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

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

EXAMPLE

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

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

4. In computing length of service, all service in any Civil Service agency except emergency and intermittent shall be included. Time spent on leave

Appendix A. Reduction-in-Force (Cont'd)

of absence without pay shall not be included, but educational and military leave shall be included. If a person works with an agency in any capacity except as an emergency or intermittent employee at two or more periods, all periods of work shall be included, but the intervening times shall not be considered as service with the agency. Seniority shall be measured by the length of time with the agency, and not the length of time in any particular capacity.

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

APPENDIX B

EXEMPT SERVICE

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

A. COMMISSION ON AGING

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

(a) Director of the Golden Mountaineer Discount Program

5. Members of advisory boards and committees who serve in a non-executive capacity
6. State and local officials serving ex officio and performing incidental administrative duties or acting in advisory capacity
7. Part-time professional personnel engaged in professional services without administrative duties
8. All part-time project personnel
9. Janitors
10. Foster Grandparents

B. ALCOHOL BEVERAGE CONTROL COMMISSION

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

(a) Assistant Alcohol Beverage Control Commissioner Operations Marketing and Sales

(b) Assistant Alcohol Beverage Control Commissioner - Accounting and Administration

(c) Director of the Enforcement Division

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

C. DEPARTMENT OF BANKING

1. Commissioner
2. One private secretary
3. One principal assistant or deputy

Appendix B. Exempt Service (Cont'd)

4. Confidential secretary to the Deputy Commissioner
5. Janitors
6. Part-time professional personnel engaged in professional services without administrative duties and personnel employee for less than ninety (90) working days a year

D. CIVIL SERVICE SYSTEM

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

E. DEPARTMENT OF CORRECTIONS

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

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

Leckie Center
Anthony Center
Davis Center
Industrial School for Boys
Industrial Home for Youth
West Virginia Penitentiary
Huttonsville Correctional Center
State Prison for Women

F. DEPARTMENT OF CULTURE AND HISTORY

1. Executive Director
2. One private secretary
3. One principal assistant or deputy

Appendix B. Exempt Service (Cont'd)

4. Policymaking positions:

- (a) Director, Division of Archives and History
- (b) Director, Division of Historic Preservation Commission
- (c) Director, Division of Arts and Humanities
- (d) Director of the Culture Center
- (e) Director of Camp Washington Carver
- (f) Director of West Virginia Independence Hall

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

G. OFFICE OF ECONOMIC AND COMMUNITY DEVELOPMENT

CRIMINAL JUSTICE

- 1. Executive Director
- 2. One private secretary
- 3. One principal assistant or deputy
- 4. Part-time professional personnel engaged in professional services without administrative duties and personnel employed for less than ninety (90) working days a year
- 5. Janitors

COMPREHENSIVE EMPLOYMENT AND TRAINING DIVISION

1. Policymaking position:

- (a) Division Director

H. OFFICE OF EMERGENCY SERVICES AND INCLUDING CERTAIN LOCAL UNITS

- 1. Director
- 2. Local emergency services directors
- 3. State and local emergency services boards
- 4. State and local offices serving ex officio and performing incidental administrative duties or acting in an advisory capacity
- 5. Janitors

I. DEPARTMENT OF EMPLOYMENT SECURITY

- 1. Commissioner
- 2. One private secretary
- 3. One principal assistant or deputy
- 4. Members of Board of Review
- 5. Secretaries of the Board of Review
- 6. Members of advisory councils

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

TECHNICAL STANDARDS

14. Technical Standards for Validity Studies

- A. Validity Studies Should be Based on Review of Information about the Job
- B. Technical Standards for Criterion-Related Validity Studies

- (1) Technical Feasibility
- (2) Analysis of the Job
- (3) Criterion Measures
- (4) Representativeness of the Sample
- (5) Statistical Relationships
- (6) Operational Use of Selection Procedures
- (7) Over-Statement of Validity Findings
- (8) Fairness
 - (a) Unfairness Defined
 - (b) Investigation of Fairness
 - (c) General Considerations in Fairness Investigations
 - (d) When Unfairness Is Shown
 - (e) Technical Feasibility of Fairness Studies
 - (f) Continued Use of Selection Procedures When Fairness Studies not Feasible

C. Technical Standards for Content Validity Studies

- (1) Appropriateness of Content Validity Studies
- (2) Job Analysis for Content Validity
- (3) Development of Selection Procedure
- (4) Standards for Demonstrating Content Validity
- (5) Reliability
- (6) Prior Training or Experience
- (7) Training Success
- (8) Operational Use
- (9) Ranking Based on Content Validity Studies

D. Technical Standards For Construct Validity Studies

- (1) Appropriateness of Construct Validity Studies
- (2) Job Analysis For Construct Validity Studies
- (3) Relationship to the Job
- (4) Use of Construct Validity Study Without New Criterion-Related Evidence
 - (a) Standards for Use
 - (b) Determination of Common Work Behaviors

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

DOCUMENTATION OF IMPACT AND VALIDITY EVIDENCE

15. Documentation of Impact and Validity Evidence

A. Required Information

- (1) Simplified Recordkeeping for Users with Less Than 100 Employees
- (2) Information on Impact

- (a) Collection of Information on Impact
- (b) When Adverse Impact Has Been Eliminated in the Total Selection Process
- (c) When Data Insufficient to Determine Impact

(3) Documentation of Validity Evidence

- (a) Type of Evidence
- (b) Form of Report
- (c) Completeness

B. Criterion-Related Validity Studies

- (1) User(s), Location(s), and Date(s) of Study
- (2) Problem and Setting
- (3) Job Analysis or Review of Job Information
- (4) Job Titles and Codes
- (5) Criterion Measures
- (6) Samples Description
- (7) Description of Selection Procedure
- (8) Techniques and Results
- (9) Alternative Procedures Investigated
- (10) Users and Applications
- (11) Source Data
- (12) Contact Person
- (13) Accuracy and Completeness

C. Content Validity Studies

- (1) User(s), Location(s), and Date(s) of Study
- (2) Problem and Setting
- (3) Job Analysis-Content of the Job
- (4) Selection Procedure and its Content
- (5) Relationship Between Selection Procedure and the Job
- (6) Alternative Procedures Investigated
- (7) Uses and Applications
- (8) Contact Person
- (9) Accuracy and Completeness

D. Construct Validity Studies

- (1) User(s), Location(s), and Date(s) of Study

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

- (2) Problem and Setting
- (3) Construct Definition
- (4) Job Analysis
- (5) Job Titles and Codes
- (6) Selection Procedure
- (7) Relationship to Job Performance
- (8) Alternative Procedures Investigated
- (9) Uses and Applications
- (10) Accuracy and Completeness
- (11) Source Data
- (12) Contact Person

E. Evidence of Validity from Other Studies

(1) Evidence from Criterion-Related Validity Studies

- (a) Job Information
- (b) Relevance of Criteria
- (c) Other Variables
- (d) Use of the Selection Procedure
- (e) Bibliography

(2) Evidence from Content Validity Studies

(3) Evidence from Construct Validity Studies

F. Evidence of Validity from Cooperative Studies

G. Selection for Higher Level Jobs

H. Interim Use of Selection Procedures

DEFINITIONS

16. Definitions

APPENDIX

17. Policy Statement on Affirmative Action (see Section 13B)

18. Citations

GENERAL PRINCIPLES

SECTION 1. Statement of Purpose.-A. Need for uniformity-Issuing agencies. The Federal Government's need for a uniform set of principles on the question of the use of tests and other selection procedures has long been recognized. The Equal Employment Opportunity Commission, the Civil Service Commission, the Department of Labor, and the Department of Justice jointly have adopted these uniform guidelines to meet that need, and to apply the same principles to the Federal Government as are applied to other employers.

B. Purpose of guidelines. These guidelines incorporate a single set of principles which are designed to assist employers, labor organiza-

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

tions, employment agencies, and licensing and certification boards to comply with requirements of Federal law prohibiting employment practices which discriminate on grounds of race, color, religion, sex, and national origin. They are designed to provide a framework for determining the proper use of tests and other selection procedures. These guidelines do not require a user to conduct validity studies of selection procedures where no adverse impact results. However, all users are encouraged to use selection procedures which are valid, especially users operating under merit principles.

C. Relation to prior guidelines. These guidelines are based upon and supersede previously issued guidelines on employee selection procedures. These guidelines have been built upon court decisions, the previously issued guidelines of the agencies, and the practical experience of the agencies, as well as the standards of the psychological profession. These guidelines are intended to be consistent with existing law.

SECTION 2. Scope.-A. Application of guidelines. These guidelines will be applied by the Equal Employment Opportunity Commission in the enforcement of Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (hereinafter "Title VII"), by the Department of Labor, and the contract compliance agencies until the transfer of authority contemplated by the President's Reorganization Plan No. 1 of 1978, in the administration and enforcement of Executive Order 11246, as amended by Executive Order 11375 (hereinafter "Executive Order 11246"); by the Civil Service Commission and other Federal agencies subject to section 717 of Title VII; by the Civil Service Commission in exercising its responsibilities toward State and local governments under section 208(b)(1) of the Intergovernmental Personnel Act; by the Department of Justice in exercising its responsibilities under Federal law, by the Office of Revenue Sharing of the Department of the Treasury under the State and Local Fiscal Assistance Act of 1972, as amended; and by any other Federal agency which adopts them.

B. Employment decisions. These guidelines apply to tests and other selection procedures which are used as a basis for any employment decision. Employment decisions include but are not limited to hiring, promotion, demotion, membership (for example, in a labor organization), referral, retention, and licensing and certification, to the extent that licensing and certification may be covered by Federal equal employment opportunity law. Other selection decisions, such as selection for training or transfer, may also be considered employment decisions if they lead to any of the decisions listed above.

C. Selection procedures. These guidelines apply only to selection procedures which are used as a basis for making employment decisions. For example, the use of recruiting procedures designed to attract members of a particular race, sex, or ethnic group, which were previously denied employment opportunities or which are currently underutilized, may be necessary to bring an employer into compliance with Federal law, and is frequently an essential element of any effective affirmative action -

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

program; but recruitment practices are not considered by these guidelines to be selection procedures. Similarly, these guidelines do not pertain to the question of the lawfulness of a seniority system within the meaning of section 703(h), Executive Order 11246 or other provisions of Federal law or regulation, except to the extent that such systems utilize selection procedures to determine qualifications or abilities to perform the job. Nothing in these guidelines is intended or should be interpreted as discouraging the use of a selection procedure for the purpose of determining qualifications or for the purpose of selection on the basis of relative qualifications, if the selection procedure has been validated in accord with these guidelines for each such purpose for which it is to be used.

D. Limitations. These guidelines apply only to persons subject to Title VII, Executive Order 11246, or other equal employment opportunity requirements of Federal law. These guidelines do not apply to responsibilities under the Age Discrimination in Employment Act of 1967, as amended, not to discriminate on the basis of age, or under sections 501, 503 and 504 of the Rehabilitation Act of 1973, not to discriminate on the basis of handicap.

E. Indian preference not affected. These guidelines do not restrict any obligation imposed or right granted by Federal law to users to extend a preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation.

SECTION 3. Discrimination defined: Relationship between use of selection procedures and discrimination.-A. Procedure having adverse impact constitutes discrimination unless justified. The use of any selection procedure which has an adverse impact on the hiring, promotion, or other employment or membership opportunities of members of any race, sex, or ethnic group will be considered to be discriminatory and inconsistent with these guidelines, unless the procedure has been validated in accordance with these guidelines, or the provisions of section 6 below are satisfied.

B. Consideration of suitable alternative selection procedures. Where two or more selection procedures are available which serve the user's legitimate interest in efficient and trustworthy workmanship, and which are substantially equally valid for a given purpose, the user should use the procedure which has been demonstrated to have the lesser adverse impact. Accordingly, whenever a validity study is called for by these guidelines, the user should include, as a part of the validity study, an investigation of suitable alternative selection procedures and suitable alternative methods of using the selection procedure which have as little adverse impact as possible, to determine the appropriateness of using or validating them in accord with these guidelines. If a user has made a reasonable effort to become aware of such alternative procedures and validity has been demonstrated in accord with these guidelines, the use of the test or other selection procedure may continue until such time as it should reasonably be reviewed for currency. Whenever the user is shown an alternative selection procedure with evidence of less adverse impact and substantial evidence of validity for the same job in similar circumstances, the user

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

should investigate it to determine the appropriateness of using or validating it in accord with these guidelines. This subsection is not intended to preclude the combination of procedures into a significantly more valid procedure, if the use of such a combination has been shown to be in compliance with these guidelines.

SECTION 4. Information on impact.-A. Records concerning impact. Each user should maintain and have available for inspection records or other information which will disclose the impact which its tests and other selection procedures have upon employment opportunities of persons by identifiable race, sex, or ethnic group as set forth in subparagraph B below in order to determine compliance with these guidelines. Where there are large numbers of applicants and procedures are administered frequently, such information may be retained on a sample basis, provided that the sample is appropriate in terms of the applicant population and adequate in size.

B. Applicable race, sex, and ethnic groups for recordkeeping. The records called for by this section are to be maintained by sex, and the following races and ethnic groups: Blacks (Negroes), American Indians (including Alaskan Natives), Asians (including Pacific Islanders), Hispanic (including persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish origin or culture regardless of race), whites (Caucasians) other than Hispanic, and totals. The race, sex, and ethnic classifications called for by this section are consistent with the Equal Employment Opportunity Standard Form 100, Employer Information Report EEO-1 series of reports. The user should adopt safeguards to insure that the records required by this paragraph are used for appropriate purposes such as determining adverse impact, or (where required) for developing and monitoring affirmative action programs, and that such records are not used improperly. See section 4E and 17(4) below.

C. Evaluation of selection rates. The "bottom line." If the information called for by sections 4A and B above shows that the total selection process for a job has an adverse impact, the individual components of the selection process should be evaluated for adverse impact. If this information shows that the total selection process does not have an adverse impact, the Federal enforcement agencies, in the exercise of their administrative and prosecutorial discretion, in usual circumstances, will not expect a user to evaluate the individual components for adverse impact or to validate such individual components, and will not take enforcement action based upon adverse impact of any component of that process, including the separate parts of a multipart selection procedure or any separate procedure that is used as an alternative method of selection. However, in the following circumstances the Federal enforcement agencies will expect a user to evaluate the individual components for adverse impact and may, where appropriate, take enforcement action with respect to the individual components: (1) where the selection procedure is a significant factor in the continuation of patterns of assignments of incumbent employees caused by prior discriminatory employment practices, (2) where the weight of court decisions or administrative interpretations hold that a specific procedure (such as height or weight requirements or no-arrest

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

records) is not job related in the same or similar circumstances. In unusual circumstances agencies may request a user to evaluate the individual components for adverse impact and may, where appropriate, take enforcement action with respect to the individual component.

D. Adverse impact and the "four-fifths rule." A selection rate for any race, sex, or ethnic group which is less than four-fifths $4/5$ (or eighty percent) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact. Smaller differences in selection rate may nevertheless constitute adverse impact, where they are significant in both statistical and practical terms or where a user's actions have discouraged applicants disproportionately on grounds of race, sex, or ethnic group. Greater differences in selection rate may not constitute adverse impact where the differences are based on small numbers and are not statistically significant, or where special recruiting or other programs cause the pool of minority or female candidates to be atypical of the normal pool of applicants from that group. Where the user's evidence concerning the impact of a selection procedure indicates adverse impact but is based upon numbers which are too small to be reliable, evidence concerning the impact of the procedure over a longer period of time and/or evidence concerning the impact which the selection procedure had when used in the same manner in similar circumstances elsewhere may be considered in determining adverse impact. Where the user has not maintained data on adverse impact as required by the documentation section of applicable guidelines, the Federal enforcement agencies may draw an inference of adverse impact of the selection process from the failure of the user to maintain such data, if the user has an underutilization of a group in the job category, as compared to the group's representation in the relevant labor market or, in the case of jobs filled from within, the applicable work force.

E. Consideration of user's equal employment opportunity posture. In carrying out their obligations, the Federal enforcement agencies will consider the general posture of the user with respect to equal employment opportunity for the job or group of jobs in question. Where a user has adopted an affirmative action program, the Federal enforcement agencies will consider the provisions of that program, including the goals and timetables which the user has adopted and the progress which the user has made in carrying out that program and in meeting the goals and timetables. While such affirmative action programs may in design and execution be race, color, sex, or ethnic conscious, selection procedures under such programs should be based upon the ability or relative ability to do the work.

SECTION 5. General standards for validity studies.-A. Acceptable types of validity studies. For the purposes of satisfying these guidelines, users may rely upon criterion-related validity studies, content validity studies of construct validity studies, in accordance with the standards set forth in the technical standards of these guidelines, section 14 below. New strategies for showing the validity of selection procedures will be evaluated as they become accepted by the psychological profession.

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

B. Criterion-related, content, and construct validity. Evidence of the validity of a test or other selection procedure by a criterion-related validity study should consist of empirical data demonstrating that the selection procedure is predictive of or significantly correlated with important elements of job performance. See section 14B below. Evidence of the validity of a test or other selection procedure by a content validity study should consist of data showing that the content of the selection procedure is representative of important aspects of performance on the job for which the candidates are to be evaluated. See section 14C below. Evidence of the validity of a test or other selection procedure through a construct validity study should consist of data showing that the procedure measures the degree to which candidates have identifiable characteristics which have been determined to be important in successful performance in the job for which the candidates are to be evaluated. See section 14D below.

C. Guidelines are consistent with professional standards. The provisions of these guidelines relating to validation of selection procedures are intended to be consistent with generally accepted professional standards for evaluating standardized tests and other selection procedures, such as those described in the Standards for Educational and Psychological Tests prepared by a joint committee of the American Psychological Association, the American Educational Research Association, and the National Council on Measurement in Education (American Psychological Association, Washington, D.C., 1974) (hereinafter "A.P.A. Standards") and standard textbooks and journals in the field of personnel selection.

D. Need for documentation of validity. For any selection procedure which is part of a selection process which has an adverse impact and which selection procedure has an adverse impact, each user should maintain and have available such documentation as is described in section 15 below.

E. Accuracy and standardization. Validity studies should be carried out under conditions which assure insofar as possible the adequacy and accuracy of the research and the report. Selection procedures should be administered and scored under standardized conditions.

F. Caution against selection on basis of knowledges, skills, or ability learned in brief orientation period. In general, users should avoid making employment decisions on the basis of measures of knowledges, skills, or abilities which are normally learned in a brief orientation period, and which have an adverse impact.

G. Method of use of selection procedures. The evidence of both the validity and utility of a selection procedure should support the method the user chooses for operational use of the procedure, if that method of use has a greater adverse impact than another method of use. Evidence which may be sufficient to support the use of a selection procedure on a pass/fail (screening) basis may be insufficient to support the use of the same procedure on a ranking basis under these guidelines. Thus, if a user decides to use a selection procedure on a ranking basis, and that method of use has a greater adverse impact than use on an appropriate pass/fail basis (see

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

section 5H below), the user should have sufficient evidence of validity and utility to support the use on a ranking basis. See sections 3B, 14B (5) and (6), and 14C (8) and (9).

H. Cutoff scores. Where cutoff scores are used, they should normally be set so as to be reasonable and consistent with normal expectations of acceptable proficiency within the work force. Where applicants are ranked on the basis of properly validated selection procedures and those applicants scoring below a higher cutoff score than appropriate in light of such expectations have little or no chance of being selected for employment, the higher cutoff score may be appropriate, but the degree of adverse impact should be considered.

I. Use of selection procedures for higher level jobs. If job progression structures are so established that employees will probably, within a reasonable period of time and in a majority of cases, progress to a higher level, it may be considered that the applicants are being evaluated for a job or jobs at the higher level. However, where job progression is not so nearly automatic, or the time span is such that higher level jobs or employees' potential may be expected to change in significant ways, it should be considered that applicants are being evaluated for a job at or near the entry level. A "reasonable period of time" will vary for different jobs and employment situations but will seldom be more than 5 years. Use of selection procedures to evaluate applicants for a higher level job would not be appropriate:

(1) If the majority of those remaining employed do not progress to the higher level job;

(2) If there is a reason to doubt that the higher level job will continue to require essentially similar skills during the progression period; or

(3) If the selection procedures measure knowledges, skills, or abilities required for advancement which would be expected to develop principally from the training or experience on the job.

J. Interim use of selection procedures. Users may continue the use of a selection procedure which is not at the moment fully supported by the required evidence of validity, provided: (1) The user has available substantial evidence of validity, and (2) the user has in progress, when technically feasible, a study which is designed to produce the additional evidence required by these guidelines within a reasonable time. If such a study is not technically feasible, see section 6B. If the study does not demonstrate validity, this provision of these guidelines for interim use shall not constitute a defense in any action, nor shall it relieve the user of any obligations arising under Federal law.

K. Review of validity studies for currency. Whenever validity has been shown in accord with these guidelines for the use of a particular selection procedure for a job or group of jobs, additional studies need not be performed until such time as the validity study is subject to review

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

as provided in section 3B above. There are no absolutes in the area of determining the currency of a validity study. All circumstances concerning the study, including the validation strategy used, and changes in the relevant labor market and the job should be considered in the determination of when a validity study is outdated.

SECTION 6. Use of selection procedures which have not been validated.

-A. Use of alternate selection procedures to eliminate adverse impact. A user may choose to utilize alternative selection procedures in order to eliminate adverse impact or as part of an affirmative action program. See section 13 below. Such alternative procedures should eliminate the adverse impact in the total selection process, should be lawful and should be as job related as possible.

B. Where validity studies cannot or need not be performed. There are circumstances in which a user cannot or need not utilize the validation techniques contemplated by these guidelines. In such circumstances, the user should utilize selection procedures which are as job related as possible and which will minimize or eliminate adverse impact, as set forth below.

(1) Where informal or unscored procedures are used. When an informal or unscored selection procedure which has an adverse impact is utilized, the user should eliminate the adverse impact, or modify the procedure to one which is a formal, scored or quantified measure or combination of measures and then validate the procedure in accord with these guidelines, or otherwise justify continued use of the procedure in accord with Federal law.

(2) Where formal and scored procedures are used. When a formal and scored selection procedure is used which has an adverse impact, the validation techniques contemplated by these guidelines usually should be followed if technically feasible. Where the user cannot or need not follow the validation techniques anticipated by these guidelines, the user should either modify the procedure to eliminate adverse impact or otherwise justify continued use of the procedure in accord with Federal law.

SECTION 7. Use of other validity studies.-A. Validity studies not conducted by the user. Users may, under certain circumstances, support the use of selection procedures by validity studies conducted by other users or conducted by test publishers or distributors and described in test manuals. While publishers of selection procedures have a professional obligation to provide evidence of validity which meets generally accepted professional standards (see section 5C above), users are cautioned that they are responsible for compliance with these guidelines. Accordingly, users seeking to obtain selection procedures from publishers and distributors should be careful to determine that, in the event the user becomes subject to the validity requirements of these guidelines, the necessary information to support validity has been determined and will be made available to the user.

B. Use of criterion-related validity evidence from other sources. Criterion-related validity studies conducted by one test user, or described

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

in test manuals and the professional literature, will be considered acceptable for use by another user when the following requirements are met:

(1) Validity evidence. Evidence from the available studies meeting the standards of section 14B below clearly demonstrates that the selection procedure is valid;

(2) Job similarity. The incumbents in the user's job and the incumbents in the job or group of jobs on which the validity study was conducted perform substantially the same major work behaviors, as shown by appropriate job analyses both on the job or group of jobs on which the validity study was performed and on the job for which the selection procedure is to be used; and

(3) Fairness evidence. The studies include a study of test fairness for each race, sex, and ethnic group which constitutes a significant factor in the borrowing user's relevant labor market for the job or jobs in question. If the studies under consideration satisfy (1) and (2) above but do not contain an investigation of test fairness, and it is not technically feasible for the borrowing user to conduct an internal study of test fairness, the borrowing user may utilize the study until studies conducted elsewhere meeting the requirements of these guidelines show test unfairness, or until such time as it becomes technically feasible to conduct an internal study of test fairness and the results of that study can be acted upon. Users obtaining selection procedures from publishers should consider, as one factor in the decision to purchase a particular selection procedure, the availability of evidence concerning test fairness.

C. Validity evidence from multiunit study. If validity evidence from a study covering more than one unit within an organization satisfies the requirements of section 14B below, evidence of validity specific to each unit will not be required unless there are variables which are likely to affect validity significantly.

D. Other significant variables. If there are variables in the other studies which are likely to affect validity significantly, the user may not rely upon such studies, but will be expected either to conduct an internal validity study or to comply with section 6 above.

SECTION 8. Cooperative studies.-A. Encouragement of cooperative studies. The agencies issuing these guidelines encourage employers, labor organizations, and employment agencies to cooperate in research, development, search for lawful alternatives, and validity studies in order to achieve procedures which are consistent with these guidelines.

B. Standards for use of cooperative studies. If validity evidence from a cooperative study satisfies the requirements of section 14 below, evidence of validity specific to each user will not be required unless there are variables in the user's situation which are likely to affect validity significantly.

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SECTION 9. No assumption of validity.-A. Unacceptable substitutes for evidence of validity. Under no circumstances will the general reputation of a test or other selection procedures, its author or its publisher, or casual reports of its validity be accepted in lieu of evidence of validity. Specifically ruled out are: assumptions of validity based on a procedure's name or descriptive labels; all forms of promotional literature; data bearing on the frequency of a procedure's usage; testimonial statements and credentials of sellers, users, or consultants; and other nonempirical or anecdotal accounts of selection practices or selection outcomes.

B. Encouragement of professional supervision. Professional supervision of selection activities is encouraged but is not a substitute for documented evidence of validity. The enforcement agencies will take into account the fact that a thorough job analysis was conducted and that careful development and use of a selection procedure in accordance with professional standards enhance the probability that the selection procedure is valid for the job.

SECTION 10. Employment agencies and employment services.-A. Where selection procedures are devised by agency. An employment agency, including private employment agencies and State employment agencies, which agrees to a request by an employer or labor organization to devise and utilize a selection procedure should follow the standards in these guidelines for determining adverse impact. If adverse impact exists the agency should comply with these guidelines. An employment is not relieved of its obligation herein because the user did not request such validation or has requested the use of some lesser standard of validation than is provided in these guidelines. The use of an employment agency does not relieve an employer or labor organization or other user of its responsibilities under Federal law to provide equal employment opportunity of its obligations as a user under these guidelines.

B. Where selection procedures are devised elsewhere. Where an employment agency or service is requested to administer a selection procedure which has been devised elsewhere and to make referrals pursuant to the results, the employment agency or service should maintain and have available evidence of the impact of the selection and referral procedures which it administers. If adverse impact results the agency or service should comply with these guidelines. If the agency or service seeks to comply with these guidelines by reliance upon validity studies or other data in the possession of the employer, it should obtain and have available such information.

SECTION 11. Disparate treatment. The principles of disparate or unequal treatment must be distinguished from the concepts of validation. A selection procedure-even though validated against job performance in accordance with these guidelines-cannot be imposed upon members of a race, sex, or ethnic group where other employees, applicants or members have not been subjected to that standard. Disparate treatment occurs where members of a race, sex, or ethnic group have been denied the same employment, promotion, membership, or other employment opportunities as have been available

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to other employees or applicants. Those employees or applicants who have been denied equal treatment, because of prior discriminatory practices or policies, must at least be afforded the same opportunities as had existed for other employees or applicants during the period of discrimination. Thus, the persons who were in the class of persons discriminated against during the period the user followed the discriminatory practices should be allowed the opportunity to qualify under less stringent selection procedures previously followed, unless the user demonstrates that the increased standards are required by business necessity. This section does not prohibit a user who has not previously followed merit standards from adopting merit standards which are in compliance with these guidelines; nor does it preclude a user who has previously used invalid or unvalidated selection procedures from developing and using procedures which are in accord with these guidelines.

SECTION 12. Retesting of applicants. Users should provide a reasonable opportunity for retesting and reconsideration. Where examinations are administered periodically with public notice, such reasonable opportunity exists, unless persons who have previously been tested are precluded from retesting. The user may however take reasonable steps to preserve the security of its procedures.

SECTION 13. Affirmative action.-A. Affirmative action obligations. The use of selection procedures which have been validated pursuant to these guidelines does not relieve users of any obligations they may have to undertake affirmative action to assure equal employment opportunity. Nothing in these guidelines is intended to preclude the use of lawful selection procedures which assist in remedying the effects of prior discriminatory practices, or the achievement of affirmative action objectives.

B. Encouragement of voluntary affirmative action programs. These guidelines are also intended to encourage the adoption and implementation of voluntary affirmative action programs by users who have no obligation under Federal law to adopt them; but are not intended to impose any new obligations in that regard. The agencies issuing and endorsing these guidelines endorse for all private employers and reaffirm for all governmental employers the Equal Employment Opportunity Coordinating Council's "Policy Statement on Affirmative Action Programs for State and Local Government Agencies" (41 FR 38814, September 13, 1976). That policy statement is attached hereto as appendix, section 17.

TECHNICAL STANDARDS

SECTION 14. Technical standards for validity studies. The following minimum standards, as applicable, should be met in conducting a validity study. Nothing in these guidelines is intended to preclude the development and use of other professionally acceptable techniques with respect to validation of selection procedures. Where it is not technically feasible for a user to conduct a validity study, the user has the obligation otherwise to comply with these guidelines. See sections 6 and 7 above.

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A. Validity studies should be based on review of information about the job. Any validity study should be based upon a review of information about the job for which the selection procedure is to be used. The review should include a job analysis except as provided in section 14B(3) below with respect to criterion-related validity. Any method of job analysis may be used if it provides the information required for the specific validation strategy used.

B. Technical standards for criterion-related validity studies.--(1) Technical feasibility. Users choosing to validate a selection procedure by a criterion-related validity strategy should determine whether it is technically feasible (as defined in section 16) to conduct such a study in the particular employment context. The determination of the number of persons necessary to permit the conduct of a meaningful criterion-related study should be made by the user on the basis of all relevant information concerning the selection procedure, the potential sample and the employment situation. Where appropriate, jobs with substantially the same major work behaviors may be grouped together for validity studies, in order to obtain an adequate sample. These guidelines do not require a user to hire or promote persons for the purpose of making it possible to conduct a criterion-related study.

(2) Analysis of the job. There should be a review of job information to determine measures of work behavior(s) or performance that are relevant to the job or group of jobs in question. These measures or criteria are relevant to the extent that they represent critical or important job duties, work behaviors or work outcomes as developed from the review of job information. The possibility of bias should be considered both in selection of the criterion measures and their application. In view of the possibility of bias in subjective evaluations, supervisory rating techniques and instructions to raters should be carefully developed. All criterion measures and the methods for gathering data need to be examined for freedom from factors which would unfairly alter scores of members of any group. The relevance of criteria and their freedom from bias are of particular concern when there are significant differences in measures of job performance for different groups.

(3) Criterion measures. Proper safeguards should be taken to insure that scores on selection procedures do not enter into any judgments of employee adequacy that are to be used as criterion measures. Whatever criteria are used should represent important or critical work behavior(s) or work outcomes. Certain criteria may be used without a full job analysis if the user can show the importance of the criteria to the particular employment context. These criteria include but are not limited to production rate, error rate, tardiness, absenteeism, and length of service. A standardized rating of overall work performance may be used where a study of the job shows that it is an appropriate criterion. Where performance in training is used as a criterion, success in training should be properly measured and the relevance of the training should be shown either through a comparison of the content of the training program with the critical or important work behavior(s) of the job(s), or through a demonstration of the relationship between measures of performance in training and measures of job performance. Measures of relative success in training include but are not limited to instructor evalu-

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ations, performance samples, or tests. Criterion measures consisting of paper and pencil tests will be closely reviewed for job relevance.

(4) Representativeness of the sample. Whether the study is predictive or concurrent, the sample subjects should insofar as feasible be representative of the candidates normally available in the relevant labor market for the job or group of jobs in question, and should insofar as feasible include the races, sexes, and ethnic groups normally available in the relevant job market. In determining the representativeness of the sample in a concurrent validity study, the user should take into account the extent to which the specific knowledges or skills which are the primary focus of the test are those which employees learn on the job.

Where samples are combined or compared, attention should be given to see that such samples are comparable in terms of the actual job they perform, the length of time on the job where time on the job is likely to affect performance, and other relevant factors likely to affect validity differences; or that these factors are included in the design of the study and their effects identified.

(5) Statistical relationships. The degree of relationship between selection procedure scores and criterion measures should be examined and computed using professionally acceptable statistical procedures. Generally, a selection procedure is considered related to the criterion, for the purposes of these guidelines, when the relationship between performance on the procedure and performance on the criterion measure is statistically significant at the 0.05 level of significance, which means that it is sufficiently high as to have a probability of no more than one (1) in twenty (20) to have occurred by chance. Absence of a statistically significant relationship between a selection procedure and job performance should not necessarily discourage other investigations of the validity of that selection procedure.

(6) Operational use of selection procedures. Users should evaluate each selection procedure to assure that it is appropriate for operational use, including establishment of cutoff scores or rank ordering. Generally, if other factors remain the same, the greater the magnitude of the relationship (e.g., correlation coefficient) between performance on a selection procedure and one or more criteria of performance on the job, and the greater the importance and number of aspects of job performance covered by the criteria, the more likely it is that the procedure will be appropriate for use. Reliance upon a selection procedure which is significantly related to a criterion measure, but which is based upon a study involving a large number of subjects and has a low correlation coefficient will be subject to close review if it has a large adverse impact. Sole reliance upon a single selection instrument which is related to only one of many job duties or aspects of job performance will also be subject to close review. The appropriateness of a selection procedure is best evaluated in each particular situation and there are no minimum correlation coefficients applicable to all employment situations. In determining whether a selection procedure is appropriate for operational use the following considerations should also be

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taken into account: The degree of adverse impact of the procedure, the availability of other selection procedures of greater or substantially equal validity.

(7) Overstatement of validity findings. Users should avoid reliance upon techniques which tend to overestimate validity findings as a result of capitalization on chance unless an appropriate safeguard is taken. Reliance upon a few selection procedures or criteria of successful job performance when many selection procedures or criteria of performance have been studied, or the use of optimal statistical weights for selection procedures computed in one sample, are techniques which tend to inflate validity estimates as a result of chance. Use of a large sample is one safeguard: cross-validation is another.

(8) Fairness. This section generally calls for studies of unfairness where technically feasible. The concept of fairness or unfairness of selection procedures is a developing concept. In addition, fairness studies generally require substantial numbers of employees in the job or group of jobs being studied. For these reasons, the Federal enforcement agencies recognize that the obligation to conduct studies of fairness imposed by the guidelines generally will be upon users or groups or users with a large number of persons in a job class, or test developers; and that small users utilizing their own selection procedures will generally not be obligated to conduct such studies because it will be technically infeasible for them to do so.

(a) Unfairness defined. When members of one race, sex, or ethnic group characteristically obtain lower scores on a selection procedure than members of another group, and the differences in scores are not reflected in differences in a measure of job performance, use of the selection procedure may unfairly deny opportunities to members of the group that obtains the lower scores.

(b) Investigation of fairness. Where a selection procedure results in an adverse impact on a race, sex, or ethnic group identified in accordance with the classifications set forth in section 4 above and that group is a significant factor in the relevant labor market, the user generally should investigate the possible existence of unfairness for that group if it is technically feasible to do so. The greater the severity of the adverse impact on a group, the greater the need to investigate the possible existence of unfairness. Where the weight of evidence from other studies shows that the selection procedure predicts fairly for the group in question and for the same or similar jobs, such evidence may be relied on in connection with the selection procedure at issue.

(c) General considerations in fairness investigations. Users conducting a study of fairness should review the A.P.A. Standards regarding investigation of possible bias in testing. An investigation of fairness of a selection procedure depends on both evidence of a validity and the manner in which the selection procedure is to be used in a particular employment context. Fairness of a selection procedure cannot necessarily be specified in advance

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without investigating these factors. Investigation of fairness of a selection procedure in samples where the range of scores on selection procedures or criterion measures is severely restricted for any subgroup sample (as compared to other subgroup samples) may produce misleading evidence of unfairness. That factor should accordingly be taken into account in conducting such studies and before reliance is placed on the results.

(d) When unfairness is shown. If unfairness is demonstrated through a showing that members of a particular group perform better or poorer on the job than their scores on the selection procedure would indicate through comparison with how members of other groups perform, the user may either revise or replace the selection instrument in accordance with these guidelines, or may continue to use the selection instrument operationally with appropriate revisions in its use to assure compatibility between the probability of successful job performance and the probability of being selected.

(e) Technical feasibility of fairness studies. In addition to the general conditions needed for technical feasibility for the conduct of a criterion-related study (see section 16, below) an investigation of fairness requires the following:

(i) An adequate sample of persons in each group available for the study to achieve findings of statistical significance. Guidelines do not require a user to hire or promote persons on the basis of group classifications for the purpose of making it possible to conduct a study of fairness; but the user has the obligation otherwise to comply with these guidelines.

(ii) The samples for each group should be comparable in terms on the actual job they perform, length of time on the job where time on the job is likely to affect performance, and other relevant factors likely to affect validity differences; or such factors should be included in the design of the study and their effects identified.

(f) Continued use of selection procedures when fairness studies not feasible. If a study of fairness should otherwise be performed, but is not technically feasible, a selection procedure may be used which has otherwise met the validity standards of these guidelines, unless the technical infeasibility resulted from discriminatory employment practices which are demonstrated by facts other than past failure to conform with requirements for validation of selection procedures. However, when it becomes technically feasible for the user to perform a study of fairness and such a study is otherwise called for, the user should conduct the study of fairness.

C. Technical standards for content validity studies.--(1) Appropriateness of content validity studies. Users choosing to validate a selection procedure by a content validity strategy should determine whether it is appropriate to conduct such a study in the particular employment context. A selection procedure can be supported by a content validity strategy to the extent that it is a representative sample of the content of the job. Selection procedures which purport to measure knowledges, skills, or abilities may in certain

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circumstances be justified by content validity, although they may be representative samples, if the knowledge, skill, or ability measured by the selection procedure can be operationally defined as provided in section 14C(4) below, and if that knowledge, skill, or ability is a necessary prerequisite to successful job performance.

A selection procedure based upon inferences about mental processes cannot be supported solely or primarily on the basis of content validity. Thus, a content strategy is not appropriate for demonstrating the validity of selection procedures which purport to measure traits or constructs, such as intelligence, aptitude, personality, common sense, judgment, leadership, and spatial ability. Content validity is also not an appropriate strategy when the selection procedure involves knowledges, skills, or abilities which an employee will be expected to learn on the job.

(2) Job analysis for content validity. There should be a job analysis which includes an analysis of the important work behavior(s) required for successful performance and their relative importance and, if the behavior results in work product(s), an analysis of the work product(s). Any job analysis should focus on the work behavior(s) and the tasks associated with them. If work behavior(s) are not observable, the job analysis should identify and analyze those aspects of the behavior(s) that can be observed and the observed work products. The work behavior(s) selected for measurement should be critical work behavior(s) and/or important work behavior(s) constituting most of the job.

(3) Development of selection procedures. A selection procedure designed to measure the work behavior may be developed specifically from the job and job analysis in question, or may have been previously developed by the user, or by other users or by a test publisher.

(4) Standards for demonstrating content validity. To demonstrate the content validity of a selection procedure, a user should show that the behavior(s) demonstrated in the selection procedure are a representative sample of the behavior(s) of the job in question or that the selection procedure provides a representative sample of the work product of the job. In the case of a selection procedure measuring a knowledge, skill, or ability, the knowledge, skill, or ability being measured should be operationally defined. In the case of a selection procedure measuring a knowledge, the knowledge being measured should be operationally defined as that body of learned information which is used in and is a necessary prerequisite for observable aspects of work behavior of the job. In the case of skills or abilities, the skill or ability being measured should be operationally defined in terms of observable aspects of work behavior of the job. For any selection procedure measuring a knowledge, skill, or ability the user should show that (a) the selection procedure measures and is a representative sample of that knowledge, skill, or ability; and (b) that knowledge, skill, or ability is used in and is a necessary prerequisite to performance of critical or important work behavior(s). In addition, to be content valid, a selection procedure measuring a skill or ability should either closely approximate an observable work behavior, or its product should closely approximate an

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observable work product. If a test purports to sample a work behavior or to provide a sample of a work product, the manner and setting of the selection procedure and its level and complexity should closely approximate the work situation. The closer the content and the context of the selection procedure are to work samples or work behaviors, the stronger is the basis for showing content validity. As the content of the selection procedure less resembles a work behavior, or the setting and manner of the administration of the selection procedure less resemble the work situation, or the result less resembles a work product, the less likely the selection procedure is to be content valid, and the greater the need for other evidence of validity.

(5) Reliability. The reliability of selection procedures justified on the basis of content validity should be a matter of concern to the user. Whenever it is feasible, appropriate statistical estimates should be made of the reliability of the selection procedure.

(6) Prior training or experience. A requirement for or evaluation of specific prior training or experience based on content validity, including a specification of level or amount of training or experience, should be justified on the basis of the relationship between the content of the training or experience and the content of the job for which the training or experience is to be required or evaluated. The critical consideration is the resemblance between the specific behaviors, products, knowledges, skills, or abilities in the experience or training and the specific behaviors, products, knowledges, skills, or abilities required on the job, whether or not there is close resemblance between the experience or training as a whole and the job as a whole.

(7) Content validity of training success. Where a measure of success in a training program is used as a selection procedure and the content of a training program is justified on the basis of content validity, the use should be justified on the relationship between the content of the training program and the content of the job.

(8) Operational use. A selection procedure which is supported on the basis of content validity may be used for a job if it represents a critical work behavior (i.e., a behavior which is necessary for performance of the job) or work behaviors which constitute most of the important parts of the job.

(9) Ranking based on content validity studies. If a user can show, by a job analysis or otherwise, that a higher score on a content valid selection procedure is likely to result in better job performance, the results may be used to rank persons who score above minimum levels. Where a selection procedure supported solely or primarily by content validity is used to rank job candidates, the selection procedure should measure those aspects of performance which differentiate among levels of job performance.

D. Technical standards for construct validity studies.-(1) Appropriateness of construct validity studies. Construct validity is a more complex strategy than either criterion-related or content validity. Construct

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validation is a relatively new and developing procedure in the employment field, and there is at present a lack of substantial literature extending the concept to employment practices. The user should be aware that the effort to obtain sufficient empirical support for construct validity is both an extensive and arduous effort involving a series of research studies, which include criterion related validity studies and which may include content validity studies. Users choosing to justify use of a selection procedure by this strategy should therefore take particular care to assure that the validity study meets the standards set forth below.

(2) Job analysis for construct validity studies. There should be a job analysis. This job analysis should show the work behavior(s) required for successful performance of the job, or the group of jobs being studied, the critical or important work behavior(s) in the job or group of jobs being studied, and an identification of the construct(s) believed to underlie successful performance of these critical or important work behaviors in the job or jobs in question. Each construct should be named and defined, so as to distinguish it from other constructs. If a group of jobs is being studied the jobs should have in common one or more critical or important work behaviors at a comparable level of complexity.

(3) Relationship to the job. A selection procedure should then be identified or developed which measures the construct identified in accord with subparagraph (2) above. The user should show by empirical evidence that the selection procedure is validly related to the construct and that the construct is validly related to the performance of critical or important work behavior(s). The relationship between the construct as measured by the selection procedure and the related work behavior(s) should be supported by empirical evidence from one or more criterion-related studies involving the job or jobs in question which satisfy the provisions of section 14B above.

(4) Use of construct validity study without new criterion-related evidence.--(a) Standards for use. Until such time as professional literature provides more guidance on the use of construct validity in employment situations, the Federal agencies will accept a claim of construct validity without a criterion-related study which satisfies section 14B above only when the selection procedure has been used elsewhere in a situation in which a criterion-related study has been conducted and the use of a criterion-related validity study in this context meets the standards for transportability of criterion-related validity studies as set forth above in section 7. However, if a study pertains to a number of jobs having common critical or important work behaviors at a comparable level of complexity, and the evidence satisfies subparagraphs 14B (2) and (3) above for those jobs with criterion-related validity evidence for those jobs, the selection procedure may be used for all the jobs to which the study pertains. If construct validity is to be generalized to other jobs or groups of jobs not in the group studied, the Federal enforcement agencies will expect at a minimum additional empirical research evidence meeting the standards of subparagraphs section 14B (2) and (3) above for the additional jobs or groups of jobs.

(b) Determination of common work behaviors. In determining whether two or more jobs have one or more work behavior(s) in common, the user

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should compare the observed work behavior(s) in each of the jobs and should compare the observed work product(s) in each of the jobs. If neither the observed work behavior(s) in each of the jobs nor the observed work product(s) in each of the jobs are the same, the Federal enforcement agencies will presume that the work behavior(s) in each job are different. If the work behaviors are not observable, then evidence of similarity of work products and any other relevant research evidence will be considered in determining whether the work behavior(s) in the two jobs are the same.

DOCUMENTATION OF IMPACT AND VALIDITY EVIDENCE

SECTION 15. Documentation of impact and validity evidence.-A. Required and validity evidence.-A. Required Information. Users of selection procedures other than those users complying with section 15A(1) below should maintain and have available for each job information on adverse impact of the selection process for that job and, where it is determined a selection process has an adverse impact, evidence of validity as set forth below.

(1) Simplified recordkeeping for users with less than 100 employees. In order to minimize recordkeeping burdens on employers who employ one hundred (100) or fewer employees, and other users not required to file EEO-1, et seq., reports, such users may satisfy the requirements of this section 15 if they maintain and have available records showing, for each year:

(a) The number of persons hired, promoted, and terminated for each job, by sex, and where appropriate by race and national origin;

(b) The number of applicants for hire and promotion by sex and where appropriate by race and national origin; and

(c) The selection procedures utilized (either standardized or not standardized). These records should be maintained for each race or national origin group (see section 4 above) constituting more than two percent (2%) of the labor force in the relevant labor area. However, it is not necessary to maintain records by race and/or national origin (see § 4 above) if one race or national origin group in the relevant labor area constitutes more than ninety-eight percent (98%) of the labor force in the area. If the user has reason to believe that a selection procedure has an adverse impact, the user should maintain any available evidence of validity for that procedure (see sections 7A and 8).

(2) Information on impact.- (a) Collection of information on impact. Users of selection procedures other than those complying with section 15A(1) above should maintain and have available for each job records or other information showing whether the total selection process for that job has an adverse impact on any of the groups for which records are called for by sections 4B above. Adverse impact determinations should be made at least annually for each such group which constitutes at least 2 percent of the labor force in the relevant labor area or 2 percent of the applicable workforce. Where a total selection process for a job has an adverse impact, Where the total selection process for a job does not have an adverse impact,

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information need not be maintained for individual components except in circumstances set forth in subsection 15A(2)(b) below. If the determination of adverse impact is made using a procedure other than the "four-fifths rule," as defined in the first sentence of section 4D above, a justification, consistent with section 4D above, for the procedure used to determine adverse impact should be available.

(b) When adverse impact has been eliminated in the total selection process. Whenever the total selection process for a particular job has had an adverse impact, as defined in section 4 above, in any year, but no longer has an adverse impact, the user should maintain and have available the information on individual components of the selection process required in the preceding paragraph for the period in which there was adverse impact. In addition, the user should continue to collect such information for at least two (2) years after the adverse impact has been eliminated.

(c) When data insufficient to determine impact. Where there has been an insufficient number of selections to determine whether there is an adverse impact of the total selection process for a particular job, the user should continue to collect, maintain and have available the information on individual components of the selection process required in section 15(A)(2)(a) above until the information is sufficient to determine that the overall selection process does not have an adverse impact as defined in section 4 above, or until the job has changed substantially.

(3) Documentation of validity evidence.--(a) Types of evidence. Where a total selection process has an adverse impact (see section 4 above) the user should maintain and have available for each component of that process which has an adverse impact, one or more of the following types of documentation evidence:

(i) Documentation evidence showing criterion-related validity of the selection procedure (see section 15B below).

(ii) Documentation evidence showing content validity of the selection procedure (see section 15C below).

(iii) Documentation evidence showing construct validity of the selection procedure (see section 15D below).

(iv) Documentation evidence from other studies showing validity of the selection procedure in the user's facility (see section 15E below).

(v) Documentation evidence showing why a validity study cannot or need not be performed and why continued use of the procedure is consistent with Federal law.

(b) Form of report. This evidence should be compiled in a reasonably complete and organized manner to permit direct evaluation of the validity of the selection procedure. Previously written employer or consultant reports of validity, or reports describing validity studies completed

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before the issuance of these guidelines are acceptable if they are complete in regard to the documentation requirements contained in this section, or if they are satisfied requirements of guidelines which were in effect when the validity study was completed. If they are not complete, the required additional documentation should be appended. If necessary information is not available the report of the validity study may still be used as documentation, but its adequacy will be evaluated in terms of compliance with the requirements of these guidelines.

(c) Completeness: In the event that evidence of validity is reviewed by an enforcement agency, the validation reports completed after the effective date of these guidelines are expected to contain the information set forth below. Evidence denoted by use of the word "(Essential)" is considered critical. If information denoted essential is not included, the report will be considered incomplete unless the user affirmatively demonstrates either its unavailability due to circumstances beyond the user's control or special circumstances of the user's study which make the information irrelevant. Evidence not so denoted is desirable but its absence will not be a basis for considering a report incomplete. The user should maintain and have available the information called for under the heading "Source Data" in sections 15B(11) and 15D(11). While it is a necessary part of the study, it need not be submitted with the report. All statistical results should be organized and presented in tabular or graphic form to the extent feasible.

B. Criterion-related validity studies. Reports of criterion-related validity for a selection procedure should include the following information:

(1) User(s), location(s), and date(s) of study. Date(s) and location(s) of the job analysis or review of job information, the date(s) and location(s) of the administration of the selection procedures and collection of criterion data, and the time between collection of data on selection procedures and criterion measures should be provided (Essential). If the study was conducted at several locations, the address of each location, including city and State, should be shown.

(2) Problem and setting. An explicit definition of the purpose(s) of the study and the circumstances in which the study was conducted should be provided. A description of existing selection procedures and cutoff scores, if any, should be provided.

(3) Job analysis or review of job information. A description of the procedure used to analyze the job or group of jobs, or to review the job information should be provided (Essential). Where a review of job information results in criteria which may be used without a full job analysis (see section 14(B)), the basis for the selection of these criteria should be reported (Essential). Where a job analysis is required a complete description of the work behavior(s) or work outcome(s), and measures of their criticality or importance should be provided (Essential). The report should describe the basis on which the behavior(s) and outcome(s) were determined to be critical or important, such as the proportion of time spent on the respective behaviors,

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their level of difficulty, their frequency of performance, the consequences of error, or other appropriate factors (Essential). Where two or more jobs are grouped for a validity study, the information called for in this subsection should be provided for each of the jobs, and the justification for the grouping (see section 14B(1)) should be provided (Essential).

(4) Job titles and codes. It is desirable to provide the user's job title(s) for the job(s) in question and the corresponding job title(s) and code(s) from U.S. Employment Service's Dictionary of Occupational Titles.

(5) Criterion measures. The basis for the selection of the criterion measures should be provided, together with references to the evidence considered in making the selection of criterion measures (Essential). A full description of all criteria on which data were collected and means by which they were observed, recorded, evaluated, and quantified, should be provided (Essential). If rating techniques are used as criterion measures, the appraisal form(s) and instructions to the rater(s) should be included as part of the validation evidence, or should be explicitly described and available (Essential). All steps taken to insure that criterion measures are free from factors which would unfairly alter the scores of members of any group should be described (Essential).

(6) Samples description. A description of how the research sample was identified and selected should be included (Essential). The race, sex, and ethnic composition of the sample, including those groups set forth in section 4A above, should be described (Essential). This description should include the size of each subgroup (Essential). A description of how the research samples compares with the relevant labor market or work force, the method by which the relevant labor market or work force was defined, and a discussion of the likely effects on validity of differences between the sample and the relevant labor market or work force, are also desirable. Descriptions of educational levels, length of service, and age are also desirable.

(7) Description of selection procedures. Any measure, combination of measures, or procedure studied should be completely and explicitly described or attached (Essential). If commercially available selection procedures are studied, they should be described by title, form, and publisher (Essential). Reports of reliability estimates and how they were established are desirable.

(8) Techniques and results. Methods used in analyzing data should be described (Essential). Measures of central tendency (e.g., means) and measures of dispersion (e.g., standard deviations and ranges) for all selection procedures and all criteria should be reported for each race, sex, and ethnic group which constitutes a significant factor in the relevant labor market (Essential). The magnitude and direction of all relationships between selection procedures and criterion measures investigated should be reported for each relevant race, sex, and ethnic group and for the total group (Essential). Where groups are too small to obtain reliable evidence of the magnitude of the relationship, need not be reported separately. Statements regarding the statistical significance of results should be made (Essential). Any statistical

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

adjustments, such as for less than perfect reliability or for restriction of score range in the selection procedure or criterion should be described and explained; and uncorrected correlation coefficients should also be shown (Essential). Where the statistical technique categorizes continuous data, such as biserial correlation and the phi coefficient, the categories and the basis on which they are determined should be described and explained (Essential). Studies of test fairness should be included where called for by the requirements of section 14B(8) (Essential). These studies should include the rationale by which a selection procedure was determined to be fair to the group(s) in question. Where test fairness or unfairness has been demonstrated on the basis of other studies, a bibliography of the relevant studies should be included (Essential). If the bibliography includes unpublished studies, copies of these studies, or adequate abstracts or summaries, should be attached (Essential). Where revisions have been made in a selection procedure to assure comparability between successful job performance and the probability of being selected, the studies underlying such revisions should be included (Essential). All statistical results should be organized and presented by relevant race, sex, and ethnic group (Essential).

(9) Alternative procedures investigated. The selection procedures investigated and available evidence of their impact should be identified (Essential). The scope, method, and findings of the investigation; and the conclusions reached in light of the findings, should be fully described (Essential).

(10) Uses and applications. The methods considered for use of the selection procedure (e.g., as a screening device with a cutoff score, for grouping or ranking or combined with other procedures in a battery) and available evidence of their impact should be described (Essential). This description should include the rationale for choosing the method for operation use, and the evidence of the validity and utility of the procedure as it is to be used (Essential). The purpose for which the procedure is to be used (e.g., hiring, transfer, promotion) should be described (Essential). If weights are assigned to different parts of the selection procedure, these weights and the validity of the weighted composite should be reported (Essential). If the selection procedure is used with a cutoff score, the user should describe the way in which normal expectations of proficiency within the work force were determined and the way in which the cutoff score was determined (Essential).

(11) Source data. Each user should maintain records showing all pertinent information about individual sample members and raters where they are used, in studies involving the validation of selection procedures. These records should be made available upon request of a compliance agency. In the case of individual sample members these data should include scores on the selection procedure(s), scores on criterion measures, age, sex, race, or ethnic group status, and experience on the specific job on which the validation study was conducted, and may also include such things as education, training, and prior job experience, but should not include names and social security numbers. Records should be maintained which show the ratings given to each sample member by each rater.

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

(12) Contact person. The name, mailing address, and telephone number of the person who may be contacted for further information about the validity study should be provided (Essential).

(13) Accuracy and completeness. The report should describe the steps taken to assure the accuracy and completeness of the collection, analysis, and report of data and results.

C. Content validity studies. Reports of content validity for a selection procedure should include the following information:

(1) User(s), location(s) and date(s) of study. Date(s) and location(s) of the job analysis should be shown (Essential).

(2) Problem and setting. An explicit definition of the purpose(s) of the study and the circumstances in which the study was conducted should be provided. A description of existing selection procedures and cutoff scores, if any, should be provided.

(3) Job analysis-Content of the job. A description of the method used to analyze the job should be provided (Essential). The work behavior(s), the associated tasks, and, if the behavior results in a work product, the work products should be completely described (Essential). Measures of criticality and/or importance of the work behavior(s) and the method of determining these measures should be provided (Essential). Where the job analysis also identified the knowledges, skills, and abilities used in work behavior(s), an operational definition for each knowledge in terms of a body of learned information and for each skill and ability in terms of observable behaviors and outcomes, and the relationship between each knowledge, skill, or ability and each work behavior, as well as the method used to determine this relationship, should be provided (Essential). The work situation should be described, including the setting in which work behavior(s) are performed, and where appropriate, the manner in which knowledges, skills, or abilities are used, and where appropriate, the manner in which knowledges, skills, or abilities are used, and the complexity and difficulty of the knowledge, skill, or ability as used in the work behavior(s).

(4) Selection procedure and its content. Selection procedures, including those constructed by or for the user, specific training requirements, composites of selection procedures, and any other procedure supported by content validity, should be completely and explicitly described or attached (Essential). If commercially available selection procedures are used, they should be described by title, form, and publisher (Essential). The behaviors measured or sampled by the selection procedure should be explicitly described (Essential). Where the selection procedure purports to measure a knowledge, skill, or ability, evidence that the selection procedure measures and is a representative sample of the knowledge, skill, or ability should be provided (Essential).

(5) Relationship between the selection procedure and the job. The evidence demonstrating that the selection procedure is a representative work sample, a representative sample of the work behavior(s), or a representative sample of a knowledge, skill, or ability as used as a part of a work behavior and necessary

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

for that behavior should be provided (Essential). The user should identify the work behavior(s) which each item or part of the selection procedure is intended to sample or measure (Essential). Where the selection procedure purports to sample a work behavior or to provide a sample of work product, a comparison should be provided of the manner, setting, and the level of complexity of the selection procedure with those of the work situation (Essential). If any steps were taken to reduce adverse impact on a race, sex, or ethnic group in the content of the procedure or in its administration, these steps should be described. Establishment of time limits, if any, and how these limits are related to the speed with which duties must be performed on the job, should be explained. Measures of central tendency (e.g., means) and measures of dispersion (e.g., standard deviations) and estimates of reliability should be reported for all selection procedures if available. Such reports should be made for relevant race, sex, and ethnic subgroups, at least on a statistically reliable sample basis.

(6) Alternative procedures investigated. The alternative selection procedures investigated and available evidence of their impact should be identified (Essential). The scope, method, and findings of the investigation, and the conclusions reached in light of the findings, should be fully described (Essential).

(7) Uses and applications. The methods considered for use of the selection procedure (e.g., as a screening device with a cutoff score, for grouping or ranking, or combined with other procedures in a battery) and available evidence of their impact should be described (Essential). This description should include the rationale for choosing the method for operational use, and the evidence of the validity and utility of the procedure as it is to be used (Essential). The purpose for which the procedure is to be used (e.g., hiring, transfer, promotion) should be described (Essential). If the selection procedure is used with a cutoff score, the user should describe the way in which normal expectations of proficiency within the work force were determined and the way in which the cutoff score was determined (Essential). In addition, if the selection procedure is to be used for ranking, the user should specify the evidence showing that a higher score on the selection procedure is likely to result in better job performance.

(8) Contact person. The name, mailing address, and telephone number of the person who may be contacted for further information about the validity study should be provided (Essential).

(9) Accuracy and completeness. The report should describe the steps taken to assure the accuracy and completeness of the collection, analysis, and report of data and results.

D. Construct validity studies. Reports of construct validity for a selection procedure should include the following information:

(1) User(s), location(s), and date(s) of study. Date(s) and location(s) of the job analysis and the gathering of other evidence called for by these guidelines should be provided (Essential).

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

(2) Problem and setting. An explicit definition of the purpose(s) of the study and the circumstances in which the study was conducted should be provided. A description of existing selection procedures and cutoff scores, if any, should be provided.

(3) Construct definition. A clear definition of the construct(s) which are believed to underlie successful performance of the critical or important work behavior(s) should be provided (Essential). This definition should include the levels of construct performance relevant to the job(s) for which the selection procedure is to be used (Essential). There should be a summary of the position of the construct in the psychological literature, or in the absence of such a position, a description of the way in which the definition and measurement of the construct was developed and the psychological theory underlying it (Essential). Any quantitative data which identify or define the job constructs, such as factor analyses, should be provided (Essential).

(4) Job analyses. A description of the method used to analyze the job should be provided (Essential). A complete description of the work behavior(s) and, to the extent appropriate, work outcomes and measures of their criticality and/or importance should be provided (Essential). The report should also describe the basis on which the behavior(s) or outcomes were determined to be important, such as their level of difficulty, their frequency of performance, the consequences of error or other appropriate factors (Essential). Where jobs are grouped or compared for the purposes of generalizing validity evidence, the work behavior(s) and work product(s) for each of the jobs should be described, and conclusions concerning the similarity of the jobs in terms of observable work behaviors or work products should be made (Essential).

(5) Job titles and codes. It is desirable to provide the selection procedure user's job title(s) for the job(s) in question and the corresponding job title(s) and code(s) from the United States Employment Service's Dictionary of Occupational Titles.

(6) Selection procedure. The selection procedure used as a measure of the construct should be completely and explicitly described or attached (Essential). If commercially available selection procedures are used, they should be identified by title, form and publisher (Essential). The research evidence of the relationship between the selection procedure and the construct, such as factor structure, should be included (Essential). Measures of central tendency variability and reliability of the selection procedure should be provided (Essential). Whenever feasible, these measures should be provided separately for each relevant race, sex and ethnic group.

(7) Relationship to job performance. The criterion-related study(ies) and other empirical evidence of the relationship between the construct measured by the selection procedure and the related work behavior(s) for the job or jobs in question should be provided (Essential). Documentation of the criterion-related study(ies) should satisfy the provisions of section 15B above or section 15E(1) below, except for studies conducted prior to the effective date of these guidelines (Essential). Where a study pertains

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

to a group of jobs, and, on the basis of the study, validity is asserted for a job in the group, the observed work behaviors and the observed work products for each of the jobs should be described (Essential). Any other evidence used in determining whether the work behavior(s) in each of the jobs is the same should be fully described (Essential).

(8) Alternative procedures investigated. The alternative selection procedures investigated and available evidence of their impact should be identified (Essential). The scope, method, and findings of the investigation, and the conclusions reached in light of the findings should be fully described (Essential).

(9) Uses and applications. The methods considered for use of the selection procedure (e.g., as a screening device with a cutoff score, for grouping or ranking, or combined with other procedures in a battery) and available evidence of their impact should be described (Essential). This description should include the rationale for choosing the method for operational use, and the evidence of the validity and utility of the procedure as it is to be used (Essential). The purpose for which the procedure is to be used (e.g., hiring, transfer, promotion) should be described (Essential). If weights are assigned to different parts of the selection procedure, these weights and the validity of the weighted composite should be reported (Essential). If the selection procedure is used with a cutoff score, the user should describe the way in which normal expectations of proficiency within the work force were determined and the way in which the cutoff score was determined (Essential).

(10) Accuracy and completeness. The report should describe the steps taken to assure the accuracy and completeness of the collection, analysis, and report of data and results.

(11) Source data. Each user should maintain records showing all pertinent information relating to its study of construct validity.

(12) Contact person. The name, mailing address, and telephone number of the individual who may be contacted for further information about the validity study should be provided (Essential).

E. Evidence of validity from other studies. When validity of a selection procedure is supported by studies not done by the user, the evidence from the original study or studies should be compiled in a manner similar to that required in the appropriate section of this section 15 above. In addition, the following evidence should be supplied:

(1) Evidence from criterion-related validity studies.-a. Job information. A description of the important job behavior(s) of the user's job and the basis on which the behaviors were determined to be important should be provided (Essential). A full description of the basis for determining that these important work behaviors are the same as those of the job in the original study (or studies) should be provided (Essential).

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

b. Relevance of criteria. A full description of the basis on which the criteria used in the original studies are determined to be relevant for the user should be provided (Essential).

c. Other variables. The similarity of important applicant pool or sample characteristics reported in the original studies to those of the user should be described (Essential). A description of the comparison between the race, sex, and ethnic composition of the user's relevant labor market and the sample in the original validity studies should be provided (Essential).

d. Use of the selection procedure. A full description should be provided showing that the use to be made of the selection procedure is consistent with the findings of the original validity studies (Essential).

e. Bibliography. A bibliography of reports of validity of the selection procedure for the job or jobs in question should be provided (Essential). Where any of the studies included an investigation of test fairness, the results of this investigation should be provided (Essential). Copies of reports published in journals that are not commonly available should be described in detail or attached (Essential). Where a user is relying upon unpublished studies, a reasonable effort should be made to obtain these studies. If these unpublished studies are the sole source of validity evidence they should be described in detail or attached (Essential). If these studies are not available, the name and address of the source, an adequate abstract or summary of the validity study and data, and a contact person in the source organization should be provided (Essential).

(2) Evidence from content validity studies. See section 14C(2) and the section 15C above.

(3) Evidence from construct validity studies. See section 14D(2) and 15D above.

F. Evidence of validity from cooperative studies. Where a selection procedure has been validated through a cooperative study, evidence that the study satisfies the requirements of sections 7, 8 and 15E should be provided (Essential).

G. Selection for higher level job. If a selection procedure is used to evaluate candidates for jobs at a higher level than those for which they will initially be employed, the validity evidence should satisfy the documentation provisions of this section 15 for the higher level job or jobs, and in addition, the user should provide: (1) A description of the job progression structure, formal or informal; (2) the data showing how many employees progress to the higher level job and the length of time needed to make this progression; and (3) an identification of any anticipated changes in the higher level job. In addition, if the test measures a knowledge, skill or ability, the user should provide evidence that the knowledge, skill or ability is required for the higher level job and the basis for the conclusion that the knowledge, skill or ability is not expected to develop from the training or experience on the job.

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

H. Interim use of selection procedures. If a selection procedure is being used on an interim basis because the procedure is not fully supported by the required evidence of validity, the user should maintain and have available (1) substantial evidence of validity for the procedure, and (2) a report showing the date on which the study to gather the additional evidence commenced, the estimated completion date of the study, and a description of the data to be collected (Essential).

DEFINITIONS

SECTION 16. Definitions. The following definitions shall apply throughout these guidelines:

A. Ability. A present competence to perform an observable behavior or a behavior which results in an observable product.

B. Adverse impact. A substantially different rate of selection in hiring, promotion, or other employment decision which works to the disadvantage of members of a race, sex, or ethnic group. See section 4 of these guidelines.

C. Compliance with these guidelines. Use of a selection procedure is in compliance with these guidelines if such use has been validated in accord with these guidelines (as defined below), or if such use does not result in adverse impact on any race, sex, or ethnic group (see section 4, above), or, in unusual circumstances, if use of the procedure is otherwise justified in accord with Federal law. See section 6B above.

D. Content validity. Demonstrated by data showing that the content of a selection procedure is representative of important aspects of performance on the job. See section 5B and section 14C.

E. Construct validity. Demonstrated by data showing that the selection procedure measures the degree to which candidates have identifiable characteristics which have been determined to be important for successful job performance. See section 5B and section 14D.

F. Criterion-related validity. Demonstrated by empirical data showing that the selection procedure is predictive of or significantly correlated with important elements of work behavior. See sections 5B and 14B.

G. Employer. Any employer subject to the provisions of the Civil Rights Act of 1964, as amended, including State or local governments and any Federal agency subject to the provisions of Section 717 of the Civil Rights Act of 1964, as amended, and any Federal contractor or subcontractor or federally assisted construction contractor or subcontractor covered by Executive Order 11246, as amended.

H. Employment agency. Any employment agency subject to the provisions of the Civil Rights Act of 1964, as amended.

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

I. Enforcement action. For the purposes of section 4 a proceeding by a Federal enforcement agency such as a lawsuit or an administrative proceeding leading to debarment from or withholding, suspension, or termination of Federal Government contracts or the suspension or withholding of Federal Government funds; but not a finding of reasonable cause or a conciliation process or the issuance of right to sue letters under Title VII or under Executive Order 11246 where such finding, conciliation, or issuance of notice of right to sue is based upon an individual complaint.

J. Enforcement agency. Any agency of the executive branch of the Federal Government which adopts these guidelines for purposes of the enforcement of the equal employment opportunity laws or which has responsibility for securing compliance with them.

K. Job analysis. A detailed statement of work behaviors and other information relevant to the job.

L. Job description. A general statement of job duties and responsibilities.

M. Knowledge. A body of information applied directly to the performance of a function.

N. Labor organization. Any labor organization subject to the provisions of the Civil Rights Act of 1964, as amended, and any committee subject thereto controlling apprenticeship or other training.

O. Observable. Able to be seen, heard, or otherwise perceived by a person other than the person performing the action.

P. Race, sex, or ethnic group. Any group of persons identifiable on the grounds of race, color, religion, sex, or national origin.

Q. Selection procedure. Any measure, combination of measures, or procedure used as a basis for any employment decision. Selection procedures include the full range of assessment techniques from traditional paper and pencil tests, performance tests, training programs, or probationary periods and physical, educational, and work experience requirements through informal or casual interviews and unscored application forms.

R. Selection rate. The proportion of applicants or candidates who are hired, promoted, or otherwise selected.

S. Should. The term "should" as used in these guidelines is intended to connote action which is necessary to achieve compliance with the guidelines, while recognizing that there are circumstances where alternative courses of action are open to users.

T. Skill. A present, observable competence to perform a learned psychomotor act.

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

U. Technical feasibility. The existence of conditions permitting the conduct of meaningful criterion-related validity studies. These conditions include: (1) An adequate sample of persons available for the study to achieve findings of statistical significance; (2) having or being able to obtain a sufficient range of scores on the selection procedure and job performance measures to produce validity results which can be expected to be representative of the results if the ranges normally expected were utilized; and (3) having or being able to devise unbiased, reliable and relevant measures of job performance or other criteria of employee adequacy. See section 14B(2). With respect to investigation of possible unfairness, the same considerations are applicable to each group for which the study is made. See section 14B(8).

V. Unfairness of selection procedure. A condition in which members of one race, sex, or ethnic group characteristically obtain lower scores on a selection procedure than members of another group, and the differences are not reflected in differences in measures of job performance. See section 14B(7).

W. User. Any employer, labor organization, employment agency, or licensing or certification board, to the extent it may be covered by Federal equal employment opportunity law, which uses a selection procedure as a basis for any employment decision. Whenever an employer, labor organization, or employment agency is required by law to restrict recruitment for any occupation to those applicants who have met licensing or certification requirements, the licensing or certifying authority to the extent it may be covered by Federal equal employment opportunity law will be considered the user with respect to those licensing or certification requirements. Whenever a State employment agency or service does no more than administer or monitor a procedure as permitted by Department of Labor regulations, and does so without making referrals or taking any other action on the basis of the results, the State employment agency will not be deemed to be a user.

X. Validated in accord with these guidelines or properly validated. A demonstration that one or more validity study or studies meeting the standards of these guidelines has been conducted, including investigation and, where appropriate, use of suitable alternative selection procedures as contemplated by section 3B, and has produced evidence of validity sufficient to warrant use of the procedure for the intended purpose under the standards of these guidelines.

Y. Work behavior. An activity performed to achieve the objectives of the job. Work behaviors involve observable (physical) components and unobservable (mental) components. A work behavior consists of the performance of one or more tasks. Knowledges, skills, and abilities are not behaviors, although they may be applied in work behaviors.

Senate Bill No. 374

(By Senator Tucker)

[Introduced February 5, 1987; referred to the Committee
on _____; then to
the Committee on the Judiciary.]

A BILL to amend article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section designated section twenty-nine (six) (ten), relating to authorizing the civil service commission to promulgate legislative rules governing the civil service system.

Be it enacted by the Legislature of West Virginia:

That article two, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty-nine (six) (ten), to read as follows:

ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-29(6)(10). Civil service commission.

The legislative rules filed in the state register on the nineteenth day of November, one thousand nine hundred eighty-six, modified by the civil service commission to meet the objection of

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

5

6 NOTE: The purpose of this bill is to authorize the Civil
7 Service Commission to promulgate legislative rules governing the
8 Civil Service System.

9

10 This section is new; therefore, strike-throughs and
11 underscoring have been omitted.

12

H. B. 2606

(By Delegate Knight)

(Introduced February 4, 1987; referred to the

Committee on Government Organization then
Judiciary)

A BILL to amend article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section designated section twenty-nine (six) (ten), relating to authorizing the civil service commission to promulgate legislative rules governing the civil service system.

Be it enacted by the Legislature of West Virginia:

That article two, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty-nine (six) (ten), to read as follows:

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