

**WEST VIRGINIA
SECRETARY OF STATE
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ADMINISTRATIVE LAW DIVISION**

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: West Virginia Division of Personnel TITLE NUMBER: 143

CITE AUTHORITY: W.V. Code 29-6-10

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 4

TITLE OF RULE BEING PROPOSED: Pre-Employment Reference and Inquiries Rule

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


Authorized Signature

WEST VIRGINIA DIVISION OF PERSONNEL
PRE-EMPLOYMENT REFERENCE AND INQUIRIES RULE

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Section 1. General

1.1. Scope: This rule implements the provisions set forth in West Virginia Code § 29-6-10 (8) regarding the eligibility of candidates or eligibles within the classified service.

1.2. Authority: This rule is issued under authority of West Virginia Code § 29-6-10.

1.3. Filing Date:

1.4. Effective Date:

Section 2. Definitions. Terms used in this rule which are not included in this section have the meaning given in the *Administrative Rule* of the Division of Personnel, 143CSR1.

2.1. Applicant: Individual being considered for employment with the State of West Virginia or in the classified service within a County Health Department; includes any employee being considered for transfer to any organizational unit with a different appointing authority.

2.2. Appointing Authority: The executive or administrative head of an agency who is authorized by statute to appoint employees in the classified or classified-exempt service. By written notification to the Director of Personnel, the appointing authority may delegate specific powers authorized by the *Administrative Rule* to persons who satisfy the definition of employee as established in the *Rule*.

2.3. Authorized Designee: Employee who is designated by an appointing authority and approved by the Division of Personnel to receive and process criminal history check request forms from applicants, receive criminal history information and make suitability determinations.

2.4. Contact Person: Employee who is designated by an appointing authority and approved by the Division of Personnel to receive and process criminal history check request forms from applicants, but who is not authorized to receive criminal history information nor to make final suitability determinations.

2.6. Disqualifying Event: Finding of responsibility for a crime by a court of law or a juvenile court including any finding of "guilty except by reason of insanity," "not guilty by reason of insanity," or similarly worded findings. A plea of "guilty" or "no contest" is also considered a disqualifying event for the purpose of this rule unless a subsequent court decision has dismissed the charges. For the purpose of this definition, a crime must be infamous or have involved moral turpitude which has a reasonable connection to the position/class for which the individual is applying.

2.5. Director: The Director of Personnel, as provided in West Virginia Code § 29-6-6 and § 29-6-9, who serves as the executive head of the Division of Personnel, or his or her designee.

2.7. Employee: Any person who lawfully occupies a position in an agency and who is paid a wage or salary and who has not severed the employee-employer relationship.

2.8. Position: An authorized and identified group of duties and responsibilities assigned by proper authority which requires the full-time or part-time employment of at least one person.

2.9. Qualified Entity: Any appointing authority authorized by the Director of Personnel to conduct investigations and/or to secure reports in compliance with this rule.

2.10. Subject Individual: An applicant or employee who is subject to a criminal history check pursuant to this rule.

2.11. Suitability Determination: The assessment of an applicant's or an employee's criminal background record, central abuse registry record, and/or driving record to determine whether the individual's employment in a particular position will be conducive to a safe workplace and public accountability and is not likely to result in actions by the individual that would cause damage to others.

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

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

Section 3. Employment Standards. The Director shall establish reasonable requirements of education, training, experience, licensure, and other relevant standards for eligibility for employment.

Section 4. Verification of Eligibility. The Director shall prescribe information required to be submitted by applicants, including fingerprints and drivers license number, that is needed by the state police and other entities for processing or as is otherwise necessary to facilitate access to information.

4.1. The Director shall confirm that applicants meet established standards by:

(a) Verification of information provided by applicants regarding:

(1) Current and previous employment and/or volunteer activities and/or student activities, including military service;

(2) Formal education;

(3) Licensure and/or certification; and,

(4) Residency;

(b) Review of local and/or national criminal history information;

(c) Review of central abuse registry; and,

(d) Review of driving records.

4.2. The Director shall conduct or authorize appointing authorities to conduct investigations and/or secure reports necessary to assess the suitability of applicants for employment or transfer in the classified service. The Director may delegate some or all responsibility to appointing authorities as qualified entities in compliance with this Rule. The Director may authorize appointing authorities to implement additional background investigation procedures.

4.3. Nothing in this rule shall be construed as to prevent an appointing authority from obtaining a copy of the credit record of an applicant for employment in a position where the appointing authority has determined that the specific job functions of that position require a demonstration of financial responsibility.

Section 5. Disqualification of Applicants. The Director may disqualify any applicant and an appointing authority may dismiss any employee if that individual has a record of a disqualifying event.

5.1. The decision to disqualify or dismiss should be based upon a consideration of the following factors:

- (a) the relevance of the disqualifying event(s) to the job-related responsibilities of the particular position for which the individual is applying or employed, including
 - (1) the nature and severity of the offense,
 - (2) whether the offense reflects adversely upon the individual's ability to perform his or her job,
 - (3) whether the offense impairs the efficient operation of the employing authority, and
 - (4) whether the offense bears a substantial relationship to duties directly affecting the rights and interests of the public;
- (b) the individual's employment history before and after the disposition of a disqualifying event;
- (c) the length of time passed since the conclusion of prosecution for the disqualifying event; and,
- (d) the individual's efforts at rehabilitation.

5.2. The Director shall notify a disqualified applicant of his or her disqualification by letter to his or her last-known address. An appointing authority shall comply with the provisions of 143CSR1, subsection 12.2 regarding the dismissal of any permanent classified employee.

Section 6. Review and Reconsideration.

6.1. Subject individuals are solely responsible for dealing with any reporting agency to challenge the accuracy or completeness of information provided by the West Virginia State Police, the Federal Bureau of Investigation or other agencies reporting information to the Director or qualified entity. Subject individuals are solely responsible for providing the Director or qualified entity with proof of any error and correction thereof by any reporting agency.

6.2. If the subject individual provides proof of any error and correction thereof by any reporting agency to the Director or qualified entity, the Director or authorized designee will conduct a new suitability determination.

6.3. If a subject individual wishes to dispute an adverse suitability determination, the subject individual may request that the Director reconsider his or her suitability. The Director shall consider the request if it is submitted in writing and received not later than fifteen (15) calendar days following the date the notice of disqualification was postmarked. Within thirty (30) calendar days after a properly submitted request for reconsideration is received, the Director shall report his or her decision in writing to the subject individual.

Section 7. Records and Reports.

7.1. The Director or authorized appointing authority shall maintain confidential records and reports pertaining to reference information and background investigations in a separate file in compliance with the standards and procedures established by the Division of Personnel.

7.2. The appointing authority shall provide all required and requested information and reports in accordance with procedures established by the Division of Personnel.

Section 8. Employee and Applicant Responsibilities.

8.1. It shall be the responsibility of the employee to report any disqualifying event to his or her appointing authority within five days of the disposition of the matter. Failure of an employee to report the disqualifying event within the time limit is grounds for disciplinary action up to and including dismissal.

8.2. Each applicant or employee shall provide information, including fingerprints, that is needed by the state police and other entities for processing or as is otherwise necessary to facilitate access to: driving records; verification of employment, education, licensure, and residence; and state and federal criminal history information.

Section 9. Appointing Authority Responsibilities. The appointing authority must comply with this rule and the procedures established by the Division of Personnel for implementation of the rule.

9.1. The authorized appointing authority shall request that the Director make a suitability determination prior to the transfer or promotion of an employee to a position for which there is a suitability standard that is different and/or more stringent than the standard for the employee's current position.

9.2. The appointing authority shall ensure adequate training is provided to all authorized designees and contact persons.

Section 10. Division of Personnel's Responsibilities. The Division of Personnel is responsible for establishing standards and procedures for implementation of this rule in accordance with West Virginia Code § 29-6-7(b)(4).