

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

Form #3

**FILED**  
AUG 30 12 23 PM '94  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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

AGENCY: DIVISION OF PUBLIC SAFETY TITLE NUMBER: 81

CITE AUTHORITY WV CODE §15-2-7(b)

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: II

TITLE OF RULE BEING AMENDED: "CADET SELECTION PHYSICAL  
QUALIFICATION"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

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

  
Authorized Signature

6.20

**Department of Military Affairs and Public Safety  
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## **Circumstances Requiring Repeal of Rule**

The following circumstances led to the proposed amendments to former CSR §81-2-1 et seq.:

- 1) **During the 1991 Legislative Session, the former Department of Public Safety Retirement Board was eliminated by statute and replaced with the Consolidated Public Employees Retirement Board. The Public Safety Board had previously been empowered to promulgate standards for cadet selection; however, the legislature amended W. Va. Code §15-2-7(b) to transfer those responsibilities to a Cadet Selection Board appointed by the Division Superintendent. The proposed rule reflects these changes.**
- 2) **The Americans with Disabilities Act and the West Virginia Human Rights Act prohibits employer inquiries prior to employment regarding an applicant's medical or psychological health. The proposed rule eliminates the provision of the former rule allowing such inquiries.**
- 3) **The Law Enforcement Training Sub-Committee of the Governor's Committee on Crime, Delinquency, and Corrections sponsored a study which identified the essential job tasks of a state police officer and then analytically connected these tasks with certain medical and physical fitness standards. The standards outlined in this updated study are incorporated into the proposed rule and replace the former standards which did not meet the job-relatedness requirements of federal law.**

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: CADET SELECTION PROCESS

Type of Rule:  Legislative  Interpretive  Procedural

Agency Division of Public Safety

Address 725 Jefferson Road  
South Charleston, West Virginia 25309-1698

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	FISCAL	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

The proposed rules will have only nominal costs (if any at all) associated with them. Therefore, we have indicated that the proposed rules will result in no costs to our agency.

3. Objectives of these rules:

To establish the process and qualifications involved in Cadet Selection for the Division of Public Safety including, but not limited to, physical standards, medical standards, testing procedures, background investigations and oral interview boards.

Rule Title: CADET SELECTION PROCESS

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

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

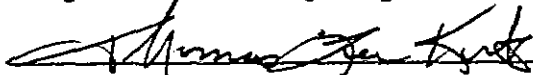
None

C. Economic Impact on Citizens/Public at Large.

None

Date: July 29, 1994

Signature of Agency Head or Authorized Representative



COLONEL THOMAS L. KIRK  
SUPERINTENDENT

DATE: AUGUST 30, 1994

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: WEST VIRGINIA DIVISION OF PUBLIC SAFETY

LEGISLATIVE RULE TITLE: CADET SELECTION PHYSICAL QUALIFICATIONS

1. Authorizing statute(s) citation WV CODE §15-2-7(b)

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

07/29/94

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

NONE

c. Date of Hearing(s) N/A

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

Attached \_\_\_\_\_ No comments received X

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

08/30/94

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

SERGEANT STEPHEN W. COGAR, 746-2112

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

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b. Date of hearing: N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

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d. Attach findings and determinations and reasons:

Attached N/A

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**Summary of Proposed Rule**

The proposed rule essentially repeals former CSR §81-2-1 et seq., and brings the Division's cadet selection process in compliance with the West Virginia Human Rights Act and the Americans with Disabilities Act. The rule outlines the process involved in applying and testing for membership in the Division including the requirements attendant to physical fitness, medical fitness, psychological fitness, and personal background. Also, the rule describes several instances in which an applicant may be disqualified from consideration for employment. Finally, the proposed rule integrates the statutorily created Cadet Selection Board into the various stages of the selection and screening process to ensure oversight of each phase.

WEST VIRGINIA LEGISLATIVE RULE  
DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY  
DIVISION OF PUBLIC SAFETY  
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Title: Cadet Selection Process

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Section 1. General

1.1 Scope - These rules establish and explain the process and qualifications involved in Cadet selection for the Division including, but not limited to, physical standards, medical standards, testing procedures, background investigations, and oral interview boards.

1.2 Authority - W. Va. Code §15-2-7(c).

1.3 Filing Date -

1.4 Effective Date -

1.5 Repeals - CSR §81-2-1 et seq., promulgated June 8, 1984.

Section 2. General Rules of Cadet Selection

2.1 The Superintendent shall establish within the Division of Public Safety a Cadet Selection Board which shall consist of five members and be representative of commissioned and non-commissioned officers within the Division.

2.2 Preference in making appointments shall be given whenever possible to honorably discharged members of the armed forces of the United States and to residents of West Virginia. A resident is a person who is currently domiciled in West Virginia and has been so domiciled for the previous two years.

2.3 The Division will accept and retain applications from those applicants who have reached their twentieth birthday; however, the Superintendent will not appoint a member to the position of state police officer until they attain the age of twenty-one years.

2.4 The Division may establish cut-off dates for application submission based on position availability, funding, and other factors.

2.5 Each applicant for employment shall be a person of sound constitution and good moral character.

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2.6 Each member appointed to the position of state police officer shall be domiciled in the State of West Virginia during the time they serve as a member of the Division, and may be subject to involuntary transfer of duty stations anywhere in the State at the discretion of the Superintendent.

2.7 Any rank ordered list of applicants may be expired or retained at the discretion of the Superintendent or his/her designee as determined by position availability, funding, and other factors..

2.8 The Division is an equal opportunity employer.

Section 3. Application Stage

3.1 Prospective applicants for Cadet positions may obtain job information and employment applications from any West Virginia State Police detachment or by writing to: West Virginia State Police, Personnel Section, 725 Jefferson Road, South Charleston, West Virginia, 25309-1698. Completed applications must be returned to the Personnel Section for processing.

3.2 The following, although not meant to be all-inclusive, contain conditions and/or circumstances that may result in rejection of an application or applicant:

3.2.1 applicant is found to lack any of the preliminary requirements established for consideration for the position by statute or otherwise; or

3.2.2 applicant has been convicted of a felony crime; or

3.2.3 applicant had made a false statement of material fact or has misrepresented their qualifications in the application or subsequent background investigation; or

3.2.4 applicant has been previously dismissed from any public service for delinquency, misconduct, or other similar cause; or

3.2.5 applicant has used or attempted to use political pressure or bribery to secure an advantage in the selection process or appointment; or

3.2.6 applicant has directly or indirectly obtained information regarding the selection process to which as an applicant he/she was not entitled; or

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3.2.7 applicant has failed to submit the application correctly or within the prescribed time limits; or

3.2.8 applicant has taken part in the compilation, administration, or correction of any examination used in the selection process; or

3.2.9 applicant has been rejected during any phase of the selection process and the condition or circumstance causing the rejection still exists; or

3.2.10 at least three (3) former employers state that they would not re-employ the applicant, or otherwise indicate that the applicant's services as an employee were unsatisfactory, or that the applicant is lacking in character; or

3.2.11 applicant is not eligible to work in the United States; or

3.2.12 applicant has not possessed a valid driver's license for two years prior to making application; or

3.2.13 applicant has any convictions for a serious traffic offense (e.g. driving while intoxicated, negligent homicide, driving while suspended or revoked, etc.); or

3.2.14 applicant has any convictions for misdemeanor crimes involving persons or property; or

3.2.15 applicant has any type or method of body art that would be normally observable while wearing any Division uniform; or

3.2.16 applicant has otherwise violated provisions of this rule; or

3.2.17 the Division detects or discerns any condition or circumstance involving the applicant that may grossly impair the applicant's ability to perform the duties attendant to the position of state police officer.

3.3 Applicant's will be notified by U. S. Mail or by other means deemed expedient by the Personnel Section of the acceptance or rejection of their application.

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Section 4. Applicant Screening Initial Stage

4.1 Qualified applicants will be notified by U. S. Mail, or by other means deemed expedient by the Personnel Section, of the date, time, and location to appear for initial applicant screening.

4.2 The applicant will be required to successfully complete a series of written examinations and physical fitness tests to determine suitability for training.

4.3 The physical fitness tests will consist of:

4.3.1 Sit-up (Muscular Endurance) - the score is the number of bent-leg sit-ups performed in one (1) minute.

4.3.2 Flex (Flexibility) - the "sit and reach" test measures the range of motion of the lower back and hamstrings. The test involves stretching out to touch the toes and beyond with extended arms from the sitting portion. The score is in inches reached on a yardstick with the fifteen inch (15") mark being at the toes.

4.3.3 Push-up (Absolute Strength) - the score is the number of conventional push-ups performed in one minute. A conventional push-up is defined as an exercise performed in the prone position by raising and lowering the body with the straightening and bending of the arms, while keeping the back straight and supporting the body on the hands and toes.

4.3.4 One and one-half mile run (Cardiovascular Capacity) - the score is the elapsed time in minutes and seconds required by the applicant to complete the run.

4.3.5 Standards for successful completion of these fitness tests shall be determined by the Division based on either generally accepted fitness standards or through a study of the fitness level of incumbent Division members.

4.4 Applicants will be notified by U. S. Mail or other means deemed expedient by the Personnel Section whether or not they successfully completed the written and physical examinations. Following successful completion of the initial screening stage, qualified applicants will be notified by U. S. Mail, or by other means deemed expedient by the Personnel Section, of the date, time, and location to appear for an oral interview.

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Section 5. Interview Stage

5.1 The applicant will be required to appear before an Interview Board. The Superintendent or his/her designee may authorize multiple interview boards each of which shall be staffed by three incumbent Division members.

5.2 The Cadet Selection Board shall compile a list of qualified applicants.

6. Background Investigation Stage

6.1 The Cadet Selection Board shall select applicants from the list, based on projected or actual position availability and other factors, for background investigation. Applicants will be notified by U. S. Mail or by other means deemed expedient by the Personnel Section whether or not they have been accepted for a background investigation.

6.2 The background investigation shall be assigned for completion to a member of the Division as a means of determining if the applicant is qualified to be appointed to the position of state police officer. The background investigation may consist of, but not be limited to:

6.2.1 Inquiries into the veracity of responses on the application; and/or

6.2.2 Interviews with references supplied by the applicant, persons familiar with the applicant, and previous employers; and/or

6.6.3 Inquiries into criminal, driving, and credit history; and/or

6.6.4 Inquiries into military background; and/or

6.6.5 Inquiries regarding civil suits naming the applicant; and/or

6.6.6 Inquiries into educational background and performance; and/or

6.6.7 Applicants shall be required to submit to a polygraph examination.

6.6.8 The Cadet Selection Board shall review the background investigations and eliminate those who have conditions and/or circumstances in their

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backgrounds that meet any of the automatic disqualification criteria in §3.2.1 et seq. *supra*, or which indicate that the applicant's ability to perform the duties attendant to the position of state police officer would be grossly impaired.

Section 7. Psychological Assessment Stage

7.1 The remaining applicants shall submit to a series of psychological examinations designed to determine each applicant's psychological fitness for duty as a state police officer.

7.2 The examinations shall be evaluated by a licensed clinical psychologist or equivalent.

7.3 The Cadet Selection Board shall eliminate those applicants whose psychological test profiles reveal that the applicant is unfit for duty as a state police officer.

7.4 Applicants will be notified by U. S. Mail or by other means deemed expedient by the Personnel Section of a favorable or unfavorable result on the psychological examinations.

Section 8. Medical Selection Stage

8.1 Each applicant successfully completing the preceding stages of the selection process shall submit to a medical examination by a licensed physician chosen by, and at the expense of the Division.

8.2 The applicant shall complete a comprehensive medical history questionnaire, supplied by the Division, which will elicit information dealing with the applicant's family health history, current health habits such as smoking, alcohol intake, physical activity, and medications. The questionnaire will also deal with, among other things, primary factors associated with coronary heart disease such as high blood pressure, high blood fat levels, obesity, physical inactivity, etc. The medical examination shall consist of selection criteria aimed at identifying conditions that may potentially exclude an applicant from consideration for appointment to the position of state police officer:

8.3. Eyes and Vision

8.3.1 Visual Acuity - Uncorrected distant vision may be equal to but not

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worse than 20/100 in the weaker eye, and, shall be correctable to better than, or equal to, 20/30 (Snellen) in each eye. Means of correction must be worn on the job and must not interfere with proper fitting of a facial mask, e.g. gas mask, riot helmet, air or blood borne pathogen masks, etc.

8.3.2 Visual Acuity - Color Vision: Candidate must pass a "controlled color discrimination test", e.g. USDOT Color Vision Examination.

8.3.3 Visual Acuity - Depth Perception: Depth Perception should be sufficient to demonstrate normal stereo depth perception with or without correction to the standard: 80 ARC seconds.

8.3.4 The examining physician is to note any other conditions which may interfere with the applicant's ability to perform the duties attendant to the position of state police officer.

#### 8.4 Ears and Hearing

8.4.1 Hearing Acuity - Using an audiometer, the applicant should have no average loss of 25 or more decibels at the 500, 1000, 2000, and 3000 Hertz (Hz) levels in either ear with no single frequency loss in excess of 40.

8.4.2 Acute Otitis Media, Otitis Externa, and Mastoiditis - If the applicant meets Hearing Acuity guidelines and the condition is resolved, then the condition is non-disqualifying.

8.4.3 Any Inner/Middle/Outer Ear Disorder Affecting Equilibrium, e.g. Meniere's Disease - If the applicant has historically had episodes of vertigo, the applicant may require further evaluation.

#### 8.5 - Nose, Throat, and Mouth

8.5.1 Loss of Sense of Smell.

8.5.2 Aphonia, Speech Loss or Speech Defects.

8.5.3 Abnormalities of the Nose, Throat, or Mouth - If the abnormality does not interfere with the applicant's breathing, or the proper fitting of a gas mask, then the condition is non-excludable.

## 8.6 Peripheral Vascular System

8.6.1 Hypertension - Resting Blood Pressure should be less than, or equal to, 140 mmHg systolic and 90 mmHg diastolic on three successive readings. (If the applicant has controlled hypertension not exceeding the above standard and is on medication with side effect profiles which do not interfere with performance of duty as a state police officer, then the condition may not be excludable. The applicant must have a functional and therapeutic cardiac classification no greater than 1A, i.e., Functional Capacity I: Applicants with cardiac disease and no limitation of physical activity. Ordinary physical activity does not cause discomfort. Applicants in this class do not have symptoms of cardiac insufficiency, nor do they experience anginal pain. Therapeutic Classification A: Applicants with cardiac disease whose physical activity need not be restricted.

8.6.2 Peripheral Vascular Abnormality - any condition which is severe and/or symptomatic may be excludable, e.g. arterial insufficiency, deep or superficial vein thrombophlebitis, Raynaud's disease.

## 8.7 Heart and Cardiovascular System

8.7.1 Congenital Heart Disease - if the applicant's functional work capacity is unimpaired, then the condition is non-excludable.

8.7.2 Valvular Heart Disease - includes significant valvular insufficiency, significant septal defects (any valve), and prolapsing mitral valve (symptomatic).

8.7.3 Coronary Artery Disease.

8.7.4 ECG Abnormalities (if associated with organic heart disease) - including but not limited to: WPW Syndrome, ST Depression, Partial or Complete Left Bundle Branch Blocks, 3 Degree A-V Block, Mobitz Type II A-V Blocks, Sinoatrial Block or Sick Sinus Syndrome, Ventricular Extrasystole (frequent - 20/minute with exercise, 10/minute without exercise), Ventricular Tachycardia, Atrial Fibrillation or Flutter, Episodic Supraventricular Tachycardia or Consistent Supraventricular Tachycardia at Rest or Persistent After Exercise Even if Asymptomatic.

8.8.5 Angina.

8.8.6 Congestive Heart Failure.

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8.8.7 Cardiomyopathy.

8.8.8 Pericarditis, Endocarditis, and Myocarditis.

8.9 Respiratory System

8.9.1 The respiratory system must be free of chronically disabling conditions that would interfere with the applicant's ability to perform the duties attendant to the position of state police officer.

8.9.2 Infectious or Potentially Infectious Pulmonary Tuberculosis.

8.9.3 Chronic Bronchitis.

8.9.4 Chronic Obstructive Pulmonary Disease.

8.9.5 Emphysema.

8.9.6 Restrictive Lung Diseases.

8.9.7 Bronchiectasis and Pneumothorax (current or repeated history)

8.9.8 Pneumonectomy.

8.9.9 Acute Mycotic Diseases - including, but not limited to, coccidioidomycosis and histoplasmosis.

8.9.10 Acute Pleurisy.

8.9.11 Malignant Disease - any condition which may interfere with the applicant's ability to perform the duties attendant to the position of state police officer must be noted.

8.10 Gastrointestinal System

8.10.1 Colitis - including but not limited to Crohn's Disease, Ulcerative Colitis, Irritable Bowel Syndrome (symptomatic or needing medication), Bacterial Colitis.

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8.10.2 Diverticulitis.

8.10.3 Esophageal Disorders - including, but not limited to, Esophageal Stricture, Lower Esophageal Ring and Esophageal Spasm. If the applicant's condition is controlled, then the condition is non-disqualifying.

8.10.4 Pancreatitis.

8.10.5 Gall Bladder Disorders.

8.10.6 Active Peptic Ulcers.

8.10.7 Symptomatic Inguinal, Umbilical, Ventral, Femoral, or Incisional Hernias.

8.10.8 Malignant Disease of the Liver, Gall Bladder, Pancreas, Esophagus, Stomach, Small or Large Bowel, Rectum, or Anus.

8.10.9 Gastrointestinal Bleeding.

8.10.10 Active or Chronic Hepatitis.

8.10.11 Cirrhosis of the Liver.

8.10.12 Motility Disorders, e.g. Scleroderma.

8.10.13 If any of the above or G-I conditions are controlled, then they may be non-excludable.

8.11 Genitourinary System

8.11.1 The examining physician is to note any conditions which may interfere with the applicant's ability to perform the duties attendant to the position of state police officer.

8.11.2 Pregnancy - examining physician should record that there is a pregnancy.

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8.11.3 Nephrectomy - if an applicant possesses this condition with normal natural renal function, then the condition is non-disqualifying.

8.11.4 Acute Nephritis.

8.11.5 Nephrotic Syndrome.

8.11.6 Acute Renal/Urinary Calculi.

8.11.7 Renal Transplant.

8.11.8 Renal Failure.

8.11.9 Hydrocele and Varicocele (Symptomatic).

8.11.10 Malignant Diseases of Bladder, Kidney, Ureter, Cervix, Ovaries, Breasts, Prostate, etc.

8.11.11 Active Venereal Diseases.

8.11.12 Urinary Tract Infection.

8.11.13 Polycystic Kidney Disease.

8.11.14 Pelvic Inflammatory Disorders.

8.11.15 Endometriosis.

8.11.16 Inflammatory Disorders, e.g. prostatitis, orchitis, epididymitis.

8.11.17 Scleroderma.

8.12 Endocrine and Metabolic Systems

8.12.1 Uncontrolled Thyroid Disease.

8.12.2 Diabetes Mellitus - potential excludability requires a case by case assessment as to the control of diabetes and presence and severity of symptoms and

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complications.

8.12.3 Adrenal Dysfunction - including, but not limited to, Addison's Disease and Cushing's Disease.

8.12.4 Insulin Reactions.

8.12.5 Untreated Thyroid Malignancy.

8.13 Musculoskeletal System

8.13.1 The examining physician is to note any condition which may interfere with the applicant's ability to perform the duties attendant to the position of state police officer.

8.13.2 Disorders that Limit Motor Function.

8.13.3 Cervical Spine or Lumbar Sacral Fusion.

8.13.4 Degenerative Cervical or Lumbar Disc Disease (if symptomatic).

8.13.5 Extremity Amputation.

8.13.6 Osteomyelitis.

8.13.7 Muscular Dystrophy.

8.13.8 Loss in the Motor Ability from Tendon or Nerve Injury/Surgery - in an area relevant to the applicant's performing the essential tasks of the job.

8.13.9 Arthritis - if the applicant possesses this condition with no functional impairment, then the condition is non-excludable.

8.13.10 Coordinated Balance.

8.13.11 Symptomatic Herniated Disc.

8.13.12 Spinal Deviations.

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8.14 Hematopoietic and Lymphatic Systems

8.14.1 Hematopoietic Disorders (including malignancies), e.g. SCD, thalassemia, G6PSD, etc.

8.14.2 Hemophilia.

8.15 Nervous System

8.15.1 The applicant must be free of any disorder which may interfere with performing the duties attendant to the position of state police officer.

8.15.2 Seizure Disorder (all types).

8.15.3 Cerebral Palsy.

8.15.4 Movement Disorders, e.g. Parkinson's.

8.15.5 Cerebral Aneurysms.

8.15.6 Syncope.

8.15.7 Progressive Neurological Diseases - including, but not limited to, Multiple Sclerosis and Huntington's Chorea.

8.15.8 Peripheral Nerve Disorder - including, but not limited to, Polyneuritis, Mononeuritis, and Neurofibromatosis.

8.15.9 Narcolepsy.

8.15.10 Cerebral Vascular Accident.

8.15.11 Central Nervous System Infections.

8.16 Any condition that requires further evaluation beyond that offered by the Division's physician shall be conducted at the applicant's expense.

8.17 The Cadet Selection Board shall exclude those applicants who, in the

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opinion of the examining physician, possess any medical condition that would preclude the applicant from performing the duties attendant to the position of state police officer. The Board shall remove those applicants excluded during the medical screening stage, and present a rank ordered list to the Superintendent.

Section 9. Final Selection Stage

9.1 In conformity to W. Va. Code §15-2-7(b), the Superintendent shall appoint a member to the position of state police officer from among the top three names on the current list of eligible applicants until all available positions are filled.

9.2 Those applicants who successfully complete all phases of the selection process, but who are not appointed by the Superintendent due to the unavailability of positions or for any other reason, will be retained on a standing list for no more than twelve months.

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**Report on Notice/Comment Period**

The notice/comment period for this rule ran from July 29, 1994, until August 30, 1994, at noon. During that time, no oral or written comments were received. The proposed rule was not amended as a result of the notice/comment period. No public hearing was held regarding the rule.