

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

FILED

1990 MAY 31 PM 1:1

Rule Title: West Virginia State Police - Career Progression System

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Type of Rule: X Legislative Interpretive Procedural

Agency Division of Public Safety Address 725 Jefferson Road.

South Charleston, WV 25309

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services	NOT APPLICABLE. SEE #3 BELOW.				
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates:

See #3 Below.

3. Objectives of these rules:

These rules are implemented in accordance with Chapter 15, Article 2, Section 5 and are intended to ensure consistency, predictability and independent review of the Career Progression System. It should be noted that the rules themselves will not result in any significant additional cost to the West Virginia State Police. The Career Progression System, as approved by the West Virginia Legislature, however, will cost approximately \$3,200,000.00 for fiscal year 1990-91.

4. Explanation of Overall Economic Impact of Proposed Rule.

- A. Economic Impact on State Government. The rules themselves have no impact. However, it should be noted that the \$3,200,000.00 cost of the Career Progression System is being funded by billing the Division of Motor Vehicles for services provided by the West Virginia State Police. Funds for payment of the services were appropriated by the Legislature and are payable from the State Road Fund.
- B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

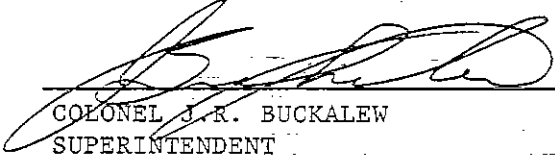
The rules themselves have no impact.

- C. Economic Impact on Citizens/Public at Large.

The rules themselves have no impact.

Date: May 31, 1990

Signature of Agency Head or Authorized Representative



COLONEL J.R. BUCKALEW
SUPERINTENDENT

FILED

DATE: ..

1990 MAY 31 PM 1:16

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

FROM:

EMERGENCY RULE TITLE:

1. Date of filing: May 30, 1990
2. Statutory authority for promulgating the emergency rule: West Virginia Code §15-2-5
3. Date of filing of proposed legislative rule: May 31, 1990
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?
Repeals General Order Number Eight - Promotion Evaluation Board
5. Has the same or similar emergency rule previously been filed and expired?
NO
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.
See Attachment

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

N/A

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

See Attachment



Joseph J. Skaff
 SECRETARY
 (304) 348-2930

State of West Virginia
 OFFICE OF THE SECRETARY
 Department of Public Safety
 State Capitol Building
 Box 2930
 1900 Kanawha Boulevard
 Charleston, West Virginia 25305-0001

Secretary of:
 Department of Public Safety and
 Comm. on Drunk Driving Prevention
 Department of Corrections
 Adjutant General's Department
 Office of Emergency Services and
 Emergency Services Advisory Council
 Armory Board
 Military Awards Board
 Sheriffs' Bureau
 Fire Commission & State Fire Admin.
 Regional Jail and Prison Authority
 Board of Probation and Parole

May 29, 1990

TO: COL J. R. Buckalew, Superintendent
 WV State Police

FROM: MG Joseph J. Skaff, Secretary *JSK 29 May 90*

SUBJECT: Emergency Filing of Legislative Rule for the
 Career Progression System

I have reviewed the new legislative rule for the Career
 Progression System and approve its submission for filing.

S/b

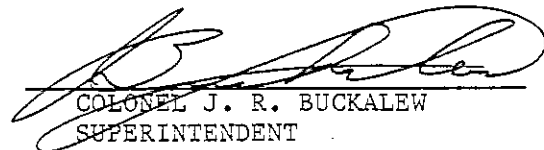
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 1990 MAY 30 PM 3:10
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A legislative rule, entitled "General Order number 8 - Promotion Evaluation Board", controlling the promotional process of the Division of Public Safety (West Virginia State Police) was filed on July 10, 1984. A subsequent challenge to the rule in Kanawha County Circuit Court in 1985 resulted in a Declaratory Judgment by Judge MacQueen that ruled certain portions of the rule to be invalid and void. An emergency filing of a subsequent and amended rule was made in 1986 under which several promotions were effected, however, for reasons unknown to the current administration of the Division of Public Safety, the emergency filing was not adopted through the necessary rule-making process, and the emergency filing expired.

The command structure of the Department has become dangerously depleted, with many critical vacancies being temporarily occupied by members of inappropriate rank and, in some cases, members have been required to assume command of multiple districts.

House Bill 4690, passed March 10, 1990, repeals and amends the promotional board statute, giving new rule-making authority to the Office of the Superintendent and allowing for the promulgation of legislative rules to control a new Career Progression System within the Division of Public Safety. The attached Emergency Rule will permit the immediate implementation of this new system upon the beginning of fiscal year 1991 and will assure the orderly operation of the Division of Public Safety that is necessary to the Division's mission and the peace and safety of the public.



COLONEL J. R. BUCKALEW
SUPERINTENDENT
DIVISION OF PUBLIC SAFETY

WEST VIRGINIA LEGISLATIVE RULE
DEPARTMENT OF PUBLIC SAFETY
CHAPTER 15-2
SERIES III
FILING

FILED
1000 MAY 30 PM 3:11
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Title: West Virginia State Police - Career Progression System

Section 1. General

1.1 Scope - This rule governs the process by which all permanent promotions, all nonsupervisory reclassifications, all criminalist reclassifications and all administrative support reclassifications shall be achieved.

1.2 Authority and Related Code Citation - W.Va. Code 15-2-5, effective July 1, 1990, and W.Va. Code 15-2-25.

1.3 Filing Date -

1.4 Effective Date -

1.5 Repeal of Former Rule - This legislative rule repeals and replaces West Virginia legislative rule, Department of Public Safety, Chapter 15-2, Series I, Section 8, filed July 10, 1984.

Section 2. Career Progression System - Introduction

2.1 This rule is promulgated for the purpose of ensuring consistency, predictability and review of the West Virginia State Police Career Progression System as authorized by West Virginia Code, Section 5, Article 2, Chapter 15, as amended.

2.2 The Superintendent shall establish a system for Career Progression and shall provide to each member a written manual governing specific procedures for the evaluation and testing of members for promotion or reclassification.

2.3 The Superintendent shall solicit from the Supervisory Field Promotional System Selection and Review Board a written review of the West Virginia State Police Career Progression System to be completed once every twelve months. Such review shall identify specific problems with the system's procedures and shall include recommendations for remedial action.

Dept. of Public Safety
Leg. Rule, 15-2
Series III, Section 8
Emergency Rule.

Section 3. Physical Fitness

3.1 The Superintendent shall adopt a comprehensive Physical Fitness Program to establish minimum levels of physical fitness performance.

3.2 A member must meet or exceed the minimum levels established for and applicable to him in order to be eligible for promotion or reclassification within the Career Progression System.

3.3 Until such time as compliance with this section has been established, all members, otherwise eligible, will be deemed to have met the physical fitness standards as required by any section of the Career Progression System.

Section 4. Disciplinary Action

4.1 For the purpose of the Career Progression System only, the following limitations will apply:

a. Reprimands will be considered only when the reprimand is issued by the Superintendent.

b. Demotions will be considered as any reduction in rank or classification within the member's permanent system.

c. Suspensions will be considered as any ordered absence from duty that results from a violation of any rule of conduct as verified through a department investigation. An ordered absence prior to a department investigation shall only be considered as a valid suspension if the investigation sustains the allegation.

4.2 The Superintendent shall cause to be established a disciplinary file containing disciplinary action applicable under the provisions of the Career Progression System.

Such disciplinary file will be purged by the following schedule:

a. A reprimand shall be purged upon expiration of twelve calendar months from the date of issue.

b. A demotion or suspension shall be purged upon expiration of twenty-four calendar months from the effective date of such demotion or suspension.

Dept. of Public Safety
Leg. Rule, 15-2
Series III, Section 8
Emergency Rule

4.3 A valid letter of reprimand, as identified by this section, shall eliminate a member's promotional or reclassification eligibility when such reprimand is issued for a violation of the Department Rules of Conduct as identified under 81-1-10 of the West Virginia Code of State Rules, except when issued for violations of the following sections of 81-1:

10.2	10.14	10.21
10.3	10.15a	10.22
10.5	10.15b	10.23
10.8a	10.15c	10.24
10.8b	10.15d	10.26a
10.8c	10.18	10.26b
10.10	10.19b	10.26d
10.12	10.19c	

4.4 A valid demotion or suspension, as identified by this section, shall eliminate a member's promotional or reclassification eligibility when such demotion or suspension results from a violation of Department Rules of Conduct as identified under 81-1-10 of the West Virginia Code of State Rules, except when resulting from a violation of the following sections of 81-1:

10.15c
10.15d

4.5 In all cases, a letter of reprimand, demotion or suspension, as identified by this section, will result in the reduction of a member's composite promotional score according to the following schedule:

- a. Any written reprimand issued as a result of a department motor vehicle accident - one point
- b. All other written reprimands - three points
- c. Any suspension or demotion - five points

4.6 When a disciplinary action results in the temporary elimination of reclassification eligibility, the member so affected shall not be adversely affected for future reclassification, thus a member so affected shall not suffer a reduction in eligibility longevity or tenure and may request elevation to any reclassification level to which the member meets the longevity requirement provided the member has occupied each preceding classification level for a minimum period of twelve consecutive calendar months.

Dept. of Public Safety
Leg. Rule, 15-2
Series III, Section 8
Emergency Rule...

Section 5. Permanent Rank Promotions

5.1 All members who have achieved and hold a current permanent rank of Senior Trooper or greater and who do not hold the permanent rank of 1/Lieutenant shall be eligible for participation in the Supervisory Field Promotional System of the West Virginia State Police Career Progression System, hereinafter promotional system, provided no member may enter the promotional system at a rank above Sergeant, and the member must receive permanent promotions to each higher rank in order, excepting any 1/Sergeant who shall be eligible for and may receive a permanent rank promotion to either 2/Lieutenant or 1/Lieutenant.

5.2 Members who participate in the promotional system shall be rank ordered on a promotional list according to the member's composite score as determined by a competitive process, the member's level of achievement in department tenure and education and the recommendation or evaluation by the member's supervisors.

5.3 The maximum attainable composite score shall be 99.98 points with the determination of points made as follows:

a. Evaluation Board - The member may receive up to 35 points for his performance before the Evaluation Board.

b. Promotional Examination - The member will receive 1 point for each whole percentile achieved over 75 percent on the written examination.

c. Supervisory Evaluation or Recommendation - Members who hold the rank of Sergeant, 1/Sergeant or 2/Lieutenant and who serve in supervisory positions will receive 1.5 points for each evaluation point awarded over 22 on the member's most recent semi-annual evaluation report. Members who hold the rank of Senior Trooper, Trooper First Class, or Corporal will receive a maximum total of 15 points for the recommendations of first, second and third level supervisors.

d. Longevity - The member will receive 1 point for each year of service from six to twenty years, inclusive.

e. Education - The member will receive .075 point, not to exceed 9.98 points, for each certified college semester hour or each five cumulative days of successfully completed department authorized or sanctioned schools.

Dept. of Public Safety
Leg. Rule, 15-2
Series III, Section 8
Emergency Rule

5.4 A Selection and Review Board shall meet upon order of the Superintendent when development of a promotional list is required due to an insufficient number of candidates remaining on a current promotional list to fill department vacancies or a number of members, equal to or greater than 10% of those remaining on the current list, reach a department tenure requirement that could permit those members to participate in the promotional system who were previously ineligible or when the current promotional list has been active for at least twelve calendar months.

a. The Selection and Review Board shall consist of six voting members, a non-voting recorder and a chairman who shall only vote in cases of tie.

b. All actions of the board shall be by majority decision.

c. The voting members shall be two members of the non-supervisory rank classification system and one member of each of the supervisory ranks of Sergeant, 1/Sergeant, and 2/Lieutenant, all of which shall be drawn by blind lot by the Superintendent or a member of the Senior Staff from a list of members as determined by the Superintendent who are eligible to participate in the promotional system of the applicable classification or supervisory rank and a member of the 1/Lieutenant rank who shall be drawn from a list of all 1/Lieutenants in the department.

d. A member who is selected for inclusion on this board may not vote on any issue of his personal promotion, and any member so affected shall be recused from any deliberations concerning such issue.

e. The board chairman shall be appointed by the Superintendent from the senior staff, and a recorder shall be selected at the direction of the Superintendent to record the actions of the Board.

f. The voting members of this board shall serve a minimum term of twelve consecutive months unless the member is unable to serve due to illness, injury, promotion, demotion, suspension or other cause.

g. In instances where a member cannot fulfill the original term of the board, the Superintendent shall appoint another member of equal rank or classification to fulfill the term.

Dept. of Public Safety
Leg. Rule, 15-2
Series III, Section 8
Emergency Rule

h. The board shall have responsibility for selecting three members of each Evaluation Board, reviewing the eligibility of applicants for promotion, determining individual promotional category scores, reviewing applicant petitions for eligibility retention and determining individual positions of applicants on the rank ordered promotional list.

i. The board shall communicate with the Reclassification Boards within the Career Progression System and shall present, each twelve months, to the Superintendent a review of the Career Progression System listing identified problems with suggestions for corrective action.

j. Prior to assuming the duties of the board, each member shall be administered the following oath by the Superintendent:

"I, _____, do solemnly swear
(or affirm) that I will, without
prejudice or partiality, perform the
duties hereby imposed upon me as a
member of this Board."

k. The Director of the Personnel Division and the Department Inspector, or those persons designated by the Superintendent, shall appear before the board, upon request of said board, for the purpose of providing specific information concerning individual member's personnel and disciplinary records necessary for determining promotional scores or eligibility.

l. The board shall evaluate applicant members according to the eligibility and other standards for supervisory rank promotions and will individually transmit to every affected member the results of individual eligibility reviews as specified within this section. Such transmittals shall be made following the review of eligibility requirements with a second transmittal following the completion of the competitive testing procedures.

m. The board will submit to the Superintendent a rank ordered promotional listing of members eligible and qualified for supervisory promotion following notification from the Supervisory Field Promotions Appellate Board that any and all appeals have been completed.

Dept. of Public Safety
Leg. Rule, 15-2
Series III, Section 8
Emergency Rule

Such rank ordered promotional list shall be affirmed as follows:

"The Selection and Review Board, acting under oath and having considered the individual qualifications and accomplishments of all applicants, finds, by majority decision, the member(s) named on the attached rank ordered promotional list are qualified to assume the duties and responsibilities of the rank as indicated and recommend said member(s) be considered for promotion to the indicated rank."

Such rank ordered promotional list shall be filed by the Superintendent and shall be maintained until such time as the list expires or a new list is created as provided in this rule.

5.5 The Superintendent shall determine the number of required Evaluation Boards and such Evaluation Boards shall meet at the direction of the Selection and Review Board.

- a. Each Evaluation Board shall consist of five members.
- b. Each member shall individually and independently score each eligible candidate appearing before the board.
- c. Two members shall be appointed by the Superintendent and shall hold the permanent rank of 1/Lieutenant or the appointed rank of Captain or greater.
- d. One member shall be selected by the Selection and Review Board and shall be equal in rank to the position under consideration and must be an eligible member as determined by the Superintendent under the provisions of the Supervisory Field Promotional System.
- e. One member shall be selected by the Selection and Review Board and shall be recruited from a State Police or Highway Patrol agency exclusive of West Virginia, and such member shall hold a supervisory rank equal to or greater than that under consideration.
- f. One member shall be selected by the Selection and Review Board and shall be recruited from a non-law enforcement profession.

Dept. of Public Safety
Leg. Rule, 15-2
Series III, Section 8
Emergency Rule

g. Each Evaluation Board shall serve a term as determined by the Selection and Review Board.

h. No Evaluation Board member may serve for consecutive promotional cycles for any single rank.

5.6 In order to be promoted, a member must be available for any assignment anywhere in the State that the Superintendent determines will be in the best interest of the department.

5.7 Promotions within the West Virginia State Police shall only be made by the Superintendent, when positions become vacant, and shall be made from among those members on the rank ordered promotional list as certified by the Selection and Review Board and whose final composite score is equal to or higher than the final composite score of the third highest ranking member who is willing and available to accept such promotion.

5.8 Should a member not elect to accept a promotion when offered, the member shall be continued on the promotional list and will be eligible for subsequent promotions without penalty for the duration of the promotional list.

Section 6. Non-Supervisory Rank Reclassification

6.1 All members permanently assigned to the field operations force and who have completed the basic State Police entry-level training program shall be eligible for participation in the Non-Supervisory Rank Classification System and will be classified as Troopers following receipt of a field assignment.

6.2 Members who participate within the Non-Supervisory Rank Classification System and who meet or exceed the minimum established reclassification and tenure requirements will be reclassified.

6.3 A member will be considered for reclassification following completion of the following years cumulative service to the department.

- a. Senior Trooper - 3 years
- b. Trooper First Class - 8 years
- c. Corporal - 14 years

Dept. of Public Safety
Leg. Rule, 15-2
Series III, Section 8
Emergency Rule

6.4 Minimum eligibility requirements shall include productivity evaluation, a general knowledge examination and compliance with physical fitness and discipline standards.

a. A member must receive a minimum score of .75 on completed productivity evaluations for the twelve-month period preceding reclassification consideration to retain eligibility, provided that any member receiving a score of less than .75 may submit a petition of justification to the Reclassification Board for review.

b. A member must receive a minimum score of 75% on the general knowledge examination to retain eligibility.

c. A member requesting reclassification must meet the requirements of the department physical fitness and disciplinary guidelines controlling career progression.

6.5 A Non-Supervisory Rank Reclassification Board shall meet, at the direction of the Superintendent.

a. The Reclassification Board shall consist of five members - two members of the senior staff as selected by the Superintendent, with the highest ranking or most senior serving as chairman; the Director of Personnel; and two members and two alternates to serve a twelve-month term, drawn by blind lot by the Superintendent, with one member and one alternate drawn from the commissioned ranks and one member and one alternate drawn from the non-commissioned officer ranks. Those members selected by the Superintendent will serve a minimum of twelve months. Should the Director of Personnel be unavailable to serve or if the position of Director of Personnel should be vacant or eliminated, the Superintendent shall select a member to occupy that board position.

b. Each board member shall have equal voting privileges and all actions of the Reclassification Board shall be by majority decision.

c. The Reclassification Board will verify a member's eligibility in the areas of longevity, productivity evaluation, general knowledge examination, physical fitness and discipline.

d. The Reclassification Board will review all applicant petitions for eligibility retention.

e. The Reclassification Board shall individually transmit to every affected member the results of individual eligibility and petition reviews.

f. A recorder shall be selected by the Superintendent to document any actions of the Reclassification Board.

g. The alternate shall fulfill the term in all instances where a member cannot fulfill the original term of the board.

h. The Reclassification Board shall have responsibility for identifying deficiencies in the Non-Supervisory Rank Classification System and for communicating these deficiencies with suggestions for remedial action to the Selection and Review Board of the Supervisory Field Promotional System.

i. Prior to assuming the duties of the Reclassification Board, each member shall be administered the following oath by the Superintendent.

"I, _____, do solemnly swear
(or affirm) that I will, without prejudice
or partiality, perform the duties hereby
imposed upon me as a member of this Board."

j. The Inspector, or other person at the direction of the Superintendent, shall appear before the Reclassification Board for the purpose of providing specific information concerning individual members' disciplinary records necessary for determining eligibility.

k. Upon verifying a member's eligibility and following notification from the Non-Supervisory Rank Reclassification Appellate Board that all appeals are complete, the Reclassification Board will submit to the Superintendent a list of members eligible for reclassification.

Such reclassification recommendation list shall be affirmed as follows:

"The Reclassification Board, acting under oath and having considered the individual qualifications and accomplishments of all members submitted to this Board, finds, by majority decision, that the members named on the attached list have met or exceeded the minimum eligibility requirements for reclassification to the non-supervisory rank indicated and recommend said member be reclassified to the indicated non-supervisory rank."

Dept. of Public Safety
Leg. Rule, 15-2
Series III, Section 8
Emergency Rule

Such list shall be filed by the Superintendent and shall be maintained for a minimum period of one year.

Section 7. Criminalist Reclassification

7.1 All members permanently assigned to the forensic laboratory shall be eligible for participation in the Criminalist Classification System, and all such members with less than one year service within the forensic laboratory shall be classified as Criminalist I.

7.2 Members who participate within the Criminalist Classification System and who meet or exceed the minimum established reclassification and tenure requirements will be reclassified.

7.3 A member may request reclassification following completion of the following years cumulative service within the forensic laboratory.

- a. Criminalist II - one
- b. Criminalist III - three
- c. Criminalist IV - five
- d. Criminalist V - eight
- e. Criminalist VI - ten

7.4 Minimum eligibility requirements shall include productivity evaluation, a general knowledge examination, supervisory recommendations, and compliance with physical fitness and discipline standards.

a. A member must receive a minimum score of .75 on completed productivity evaluations for the twelve-month period preceding reclassification consideration to retain eligibility, provided that any member receiving a score of less than .75 may submit a petition of justification to the Reclassification Board for review.

b. A member must receive a minimum score of 75% on the general knowledge examination to retain eligibility.

c. A member requesting reclassification must meet the requirements of the department physical fitness and disciplinary guidelines controlling career progression.

7.5 The Criminalist Reclassification Board shall meet, at the direction of the Superintendent, following a reclassification request by a member of the Criminalist System.

Dept. of Public Safety
Leg. Rule, 15-2
Series III, Section 8

a. The Reclassification Board shall consist of five members; including the Officer in Charge of Support Services who shall serve as Chairman, the Director of the Forensic Laboratory and the Director of Personnel as permanent members and two members and two alternates, to serve a twelve-month term, drawn by blind lot by the Superintendent from all members of the Criminalist System who will not become eligible for reclassification during the term of the board. Should the Director of the Forensic Laboratory and/or the Director of Personnel be unavailable to serve or if either or both positions should be vacant or eliminated, the Superintendent shall select a member or members to occupy any such vacancies.

b. Each board member shall have equal voting privileges and all actions of the Reclassification Board shall be by majority decision.

c. The Reclassification Board will verify a member's eligibility in the areas of criminalist tenure, productivity evaluation, general knowledge examination score, physical fitness, discipline and supervisory recommendations.

d. The Reclassification Board will review all applicant petitions for eligibility retention and will determine eligibility.

e. A recorder shall be selected by the Superintendent to document the actions of the Reclassification Board.

f. The alternate shall fulfill the term in instances where a member cannot fulfill the original term of the board.

g. The Reclassification Board shall have responsibility for identifying deficiencies in the Criminalist Classification System and for communicating these deficiencies with suggestions for remedial action to the Selection and Review Board of the Supervisory Field Promotional System.

h. Prior to assuming the duties of the Reclassification Board, each member shall be administered the following oath by the Superintendent:

"I, _____, do solemnly swear
(or affirm) that I will, without prejudice
or partiality, perform the duties hereby
imposed upon me as a member of this Board."

Dept. of Public Safety
Leg. Rule, 15-2
Series III, Section 8
Emergency Rule

i. The Inspector or other person at the direction of the Superintendent shall appear before the Reclassification Board with specific information concerning individual members' disciplinary records necessary for determining eligibility.

j. Upon verifying a member's eligibility and following notification from the Criminalist Reclassifications Appellate Board that all appeals are complete, the Reclassification Board will submit to the Superintendent a recommendation for reclassification.

Such reclassification recommendation shall be affirmed as follows:

"The Reclassification Board, acting under oath and having considered the individual qualifications and accomplishments of the member(s) requesting reclassification, finds, by majority decision, that the member(s) named on the attached recommendation have met or exceeded the minimum eligibility requirements for reclassification to the Criminalist Classification indicated and recommend said member(s) be reclassified to the indicated Criminalist Classification."

Such list shall be filed by the Superintendent and shall be maintained for a minimum period of one year.

Section 8. Administrative Support Specialist Reclassification

8.1 All members assigned to Support Specialist positions, shall be eligible for participation in the Administrative Support Specialist Classification System, provided such members have successfully completed a one-year probationary period within a specific support specialist position.

8.2 A member shall not advance within the administrative support specialist classification system to a level that exceeds the maximum classification level established for that position.

8.3 A member may request reclassification to the next applicable classification level following each twelve months of continuous service as a support specialist.

8.4 A member requesting reclassification must submit a petition for reclassification to the Support Specialist Reclassification Board. Such petition shall take such form as required by the Superintendent.

Dept. of Public Safety
Leg. Rule, 15-2
Series III, Section 8
Emergency Rule

8.5 A member requesting reclassification must meet the requirements of the department physical fitness and disciplinary guidelines controlling career progression.

8.6 A member who is denied reclassification or promotional eligibility within the member's permanent career progression system shall not be eligible for reclassification within the Administrative Support Specialist Classification System until such time as the member achieves eligibility within the permanent system.

8.7 The Administrative Support Specialist Reclassification Board shall meet, at the direction of the Superintendent, following a reclassification request by a member of the Administrative Support Specialist System.

a. The Reclassification Board shall consist of five members, including three members of the senior staff as determined by the Superintendent with the highest ranking or most senior serving as chairman, the most senior ranking officer assigned to the Training Academy and the Director of the Personnel Division. Those members selected by the Superintendent shall serve a minimum term of twelve months.

b. Should the Director of Personnel submit a petition for reclassification or otherwise be unavailable to serve, or if the position of Director of Personnel should be vacant or eliminated, the Superintendent shall select a member to occupy that board position.

c. Each board member shall have equal voting privileges and all actions of the Reclassification Board shall be by majority decision.

d. The Reclassification Board will verify a member's eligibility in the areas of support specialist tenure, physical fitness and discipline.

e. The Reclassification Board will review all petitions for reclassification and will determine eligibility.

f. A recorder shall be selected by the Superintendent to document any actions of the Reclassification Board.

Dept. of Public Safety
Leg. Rule, 15-2
Series III, Section 8
Emergency Rule

g. In all instances where a board member cannot fulfill the original term of the board, the Superintendent shall appoint a member of the senior staff or a member of the Administrative Support Specialist Classification System to fulfill the term.

h. The Reclassification Board shall have responsibility for identifying deficiencies in the Administrative Support Specialist Classification System and for communicating these deficiencies, with suggestions for remedial action, to the Selection and Review Board of the Supervisory Field Promotional System.

i. Prior to assuming the duties of the Reclassification Board, each member shall be administered the following oath by the Superintendent:

"I, _____, do solemnly swear (or affirm) that I will, without prejudice or partiality, perform the duties hereby imposed upon me as a member of this Board."

j. The Inspector, or other person at the direction of the Superintendent, shall appear before the Reclassification Board for the purpose of providing the board with specific information concerning individual member's disciplinary records necessary for determining eligibility.

k. Upon verifying a member's eligibility and following notification from the Administrative Support Specialist Reclassifications Appellate Board that all appeals are complete, the Reclassification Board will submit to the Superintendent a recommendation for reclassification.

Such reclassification recommendation shall be affirmed as follows:

"The Reclassification Board, acting under oath and having considered the individual qualifications and accomplishments of the member(s) requesting reclassification, finds, by majority decision, that the member(s) named on the attached recommendation(s) have met the eligibility requirements for reclassification to the Support Specialist Classification indicated and recommend said member(s) be reclassified to the indicated Support Specialist classification."

Such list shall be filed by the Superintendent and shall be maintained for a minimum period of one year.

Dept. of Public Safety
Leg. Rule, 15-2
Series III, Section 8
Emergency Rule

Section 9. Career Progression Appeals

9.1 Members shall have the right to review and appeal any adverse decision concerning their eligibility for promotion or reclassification within any section of the Career Progression System by appearing before or submitting written argument to the applicable appellate board.

9.2 Members who participate within any section of the Career Progression System that requires a written examination shall be permitted to review the examination answer key immediately following the scoring and recording of the examination. Such review shall be conducted by the test administrator or other person designated by the Superintendent.

9.3 Members who participate within the Supervisory Field Promotional System shall be entitled to review and appeal any numerical value presented by the Selection and Review Board as representation of the member's individual score for longevity, educational achievement, supervisory evaluation or recommendation, or Evaluation Board score.

9.4 A member shall be notified in writing of his individual numerical values for scores used for promotional consideration.

9.5 The member must petition, in writing, the applicable appellate board within 15 days following any decision issued by a Selection and Review or Reclassification Board, and the appellate board must render a decision within 5 days following the review of any appeal. Any such petition must include the member's standing for appeal.

9.6 All decisions of an appellate board shall be final and not subject to judicial review.

9.7 Separate and distinct appellate boards shall be created to address member appeals generated within each section of the Career Progression System and such appellate boards shall be designated:

- a. Supervisory Field Promotions Appellate Board
- b. Non-Supervisory Rank Reclassifications Appellate Board
- c. Criminalist Reclassifications Appellate Board
- d. Administrative Support Specialist Reclassifications Appellate Board

Dept. of Public Safety
Leg. Rule, 15-2
Series III, Section 8
Emergency Rule

9.8 The Supervisory Field Promotion Appellate Board and the Non-Supervisory Rank Reclassification Appellate Boards shall be comprised of five members. Each board shall be drawn by blind lot by the Superintendent or a member of the senior staff, with one member being drawn from each of the supervisory ranks of Sergeant, 1/Sergeant, 2/Lieutenant and 1/Lieutenant and one member being drawn from the non-supervisory ranks of Senior Trooper, Trooper First Class and Corporal, with one alternate drawn for each position, provided that members participating within the Criminalist Classification System shall not be eligible for selection to this board.

9.9 The Criminalist Reclassification Appellate Board shall be comprised of three members. The board and one alternate shall be drawn by blind lot by the Superintendent or a member of the senior staff from all members of the Criminalist System.

9.10 The Administrative Support Specialist Reclassification Appellate Board shall be comprised of five members. The board and two alternates shall be drawn by blind lot by the Superintendent or a member of the Senior Staff from the Administrative Support Specialist Classification System, provided that any member shall be withdrawn from such board and replaced by an alternate, if the member receives a transfer that results in the loss of support specialist designation.

9.11 Each appellate board shall select a member to serve as board chairman. Each board member shall have equal voting privileges and all actions of any board shall be by majority decision.

9.12 The Superintendent shall appoint for each appellate board a non-board member or civilian employee of the department to serve as a non-voting recorder.

9.13 Prior to assuming the duties of any appellate board, created under the provisions of this section, the following oath shall be administered by a notary public:

"I, _____, do solemnly swear (or affirm) that I will, without prejudice or partiality, perform the duties hereby imposed upon me as a member of this Appellate Board."

9.14 Any member submitting an appeal to any appellate board to which he has been selected shall be prohibited from participation on such board and will be replaced by an alternate for the duration of the board's term.

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Leg. Rule, 15-2
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9.15 All members who are responsible for completing or reviewing any recommendation, evaluation, examination or other such issue that directly effects the eligibility for reclassification or promotion of any member submitting an appeal to any appellate board to which he has been selected shall be temporarily recused from the appellate board and replaced by the alternate for any board deliberations or other actions concerning that appeal.

9.16 In any instance where a board chairman is removed, recused or otherwise unable to serve for all or part of any appellate board term, the affected board shall select a member of the board to act as board chairman in such absence.

9.17 Should there be insufficient alternates available to comprise a complete appellate board, the Superintendent shall select the necessary alternates from the appropriate ranks or classifications.

9.18 Each appellate board shall have the authority to review all appeals submitted to it and to issue summary dismissal of any and all such appeals that are absent standing for appeal or are otherwise determined by the board to be invalid and without merit.

9.19 A written decision by the appellate board shall be issued following each review, and such decision shall specify one of three decisions as follows:

a. The appeal has been summarily dismissed (in which case, the reason for dismissal shall be indicated).

b. The decision of the Selection and Review Board or Reclassification Board, as appropriate, has been upheld (in which case, the member's eligibility status or promotional score will remain unchanged).

c. The decision of the Selection and Review Board or Reclassification Board, as appropriate, has been reversed (in which case, the member's eligibility is reinstated or promotional score is changed to reflect the findings of the Appellate Board).



KEN HECHLER
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Special Assistant

(Plus all the volunteer
help we can get)

July 12, 1990

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE July 12, 1990
ADMINISTRATIVE LAW DIVISION

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Public Safety

RULE: Amendments, Series 1; General Order Number Eight -
Promotion Evaluation Board

DATE FILED AS AN EMERGENCY RULE: May 31, 1990

DECISION NO. 13-90.

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

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Secretary of State

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DECISION EMERGENCY RULE DECISION (ERD 13-90)

AGENCY: Public Safety
RULE: Amendments, Series 1, Career Progression System
FILED AS AN EMERGENCY RULE: May 30, 1990

- par. 1 The Division of Public Safety has filed the above emergency amendments to an existing rule.
- par. 2 West Virginia Code 29A-3-15A requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a(a)].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the ERD is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Public Safety has filed this emergency rule with supporting documents with the Secretary of State on May 30, 1990 and with the LRMRC on May 30, 1990.

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

par. 8 (B) Statutory Authority -- WV Code §15-2-5 reads in part:

The superintendent is authorized to promulgate legislative rules in accordance with §29A-1-1 et seq. of this code for the purpose of ensuring consistency, predictability and independent review of any system developed under the provisions of this section.

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

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

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

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

par. 12 The facts and circumstances as presented by Public Safety are as follows:

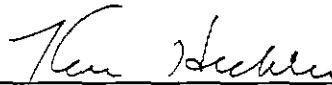
A Legislative rule, entitled "General Order Number 8 - Promotion Evaluation Board", controlling the promotional process of the Division of Public Safety (West Virginia State Police) was filed on July 10, 1984. A subsequent challenge to the rule in Kanawha County Circuit Court in 1985 resulted in a Declaratory Judgment by Judge MacQueen that ruled certain portions of the rule to be invalid and void. An emergency filing of a subsequent and amended rule was made in 1986 under which several promotions were effected, however, for reasons unknown to the current administration of the Division of Public Safety, the emergency filing was not adopted through the necessary rule-making process, and the emergency filing expired.

The command structure of the Department has become dangerously depleted, with many critical vacancies being temporarily occupied by members of inappropriate rank and, in some cases, members have been required to assume command of multiple districts.

House Bill 4690, passed March 10, 1990, repeals and amends the promotional board statute, giving new rule-making authority to the Office of the Superintendent and allowing for the promulgation of legislative rules to control a new Career Progression System within the Division of Public Safety. The attached Emergency Rule will permit the immediate implementation of this new system upon the beginning of fiscal year 1991 and will assure the orderly operation of the Division of Public Safety that is necessary to the Division's mission and the peace and safety of the public.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in 29A-3-15(g) . . . "to comply with a time limitation".

par. 14 This decision shall be cited as Emergency Rule Decision 13-90 or ERD 13-90 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with Division of Public Safety, the Attorney General and the Legislative Rule Making Review Committee.



KEN HECHLER
SECRETARY OF STATE

FILED IN THE OFFICE OF
THE SECRETARY OF STATE

Entered _____ THIS DATE July 12, 1990
ADMINISTRATIVE SERVICES DIVISION