

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

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

AGENCY: WEST VIRGINIA STATE POLICE TITLE NUMBER: 81

CITE AUTHORITY: 15-2-5

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Administrative Rules

IF NO, SERIES NUMBER OF 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.

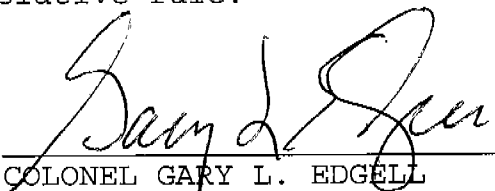

Authorized Signature

\$5.20

West Virginia State Police
Title 81
Series 1

Circumstances Requiring Amendment of Rule

1. The rule currently contains sections entitled Operations, Organizational Structure, Transfer, and Overtime Compensation. The 1998 Session of the West Virginia Legislature passed HB 4016 which mandated that the State Police establish the organizational structure by interpretive rule which removes that subject matter from the purview of this rule.
2. Additionally, the section entitled Overtime Compensation was, in itself, a misnomer and contains incorrect information regarding the number of hours that constitute a standard work month for members classified as FLSA exempt. In light of this revision, the scale which determines the portion of supplemental pay for which a member is eligible was also in error. This section was retained due to the requirement in §15-2-5 that a legislative rule be promulgated governing the receipt of supplemental pay by exempt members.
3. The section entitled Transfers was deleted because the language contained therein was duplicative of language already existing in §15-2-20.
4. The section entitled Operations will be dealt with in separate legislative rule.



COLONEL GARY L. EDGELL
SUPERINTENDENT

West Virginia State Police
Title 81
Series 1

Summary of Proposed Amendment

This rule repeals former §81-1-1 et seq., and deals solely with the manner in which members who are classified as FLSA exempt may receive all or a portion of their supplemental pay.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: SUPPLEMENTAL PAY

Type of Rule: Legislative Interpretive Procedural

Agency: WEST VIRGINIA STATE POLICE

Address: 725 Jefferson Road

South Charleston, WV 25309-1698

1. Effect of Proposed rule:

| | ANNUAL FISCAL YEAR | | | | |
|----------------------------------|--------------------|----------|---------|------|------------|
| | INCREASE | DECREASE | CURRENT | NEXT | THEREAFTER |
| ESTIMATED TOTAL COST | -0- | -0- | -0- | -0- | -0- |
| PERSONAL SERVICES | | | | | |
| CURRENT EXPENSE | | | | | |
| REPAIRS & ALTERATIONS | | | | | |
| 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 result in no costs to our agency.

3. Objectives of These Rules:

This rule governs the amount of supplemental pay that may be earned by an exempt member of the State Police and sets forth the standard work month in hours for exempt employees.

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

NONE

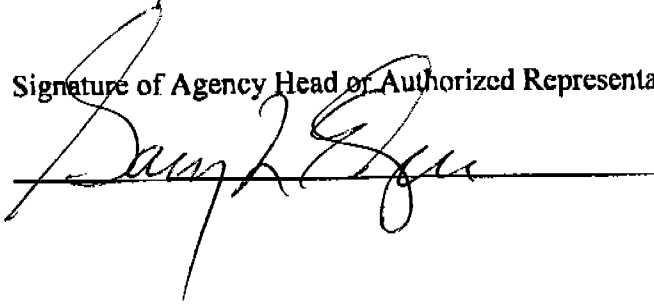
B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

NONE

C. Economic Impact on Citizens/Public at Large.

NONE

Date: 7/31/98

Signature of Agency Head or Authorized Representative:


QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: August 3, 1998

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) WEST VIRGINIA STATE POLICE

725 JEFFERSON ROAD

SOUTH CHARLESTON, WV 25309-1698

LEGISLATIVE RULE TITLE: SUPPLEMENTAL PAY

1. Authorizing statute(s) citation 15-2-5

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

July 1, 1998

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

None

c. Date of Public Hearing(s) or Public Comment Period ended:

July 31, 1998

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)

August 3, 1998

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (Please type)

Colonel Gary L. Edgell

725 Jefferson Rd.

South Charleston, WV 25309

- g. **IF DIFFERENT FROM ITEM 'f',** please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

1/Sergeant C. R. Blankenship

725 Jefferson Rd.

So. Charleston, WV 25309

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

b. Date of hearing or comment period:

_____ 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 _____

d. Attach findings and determinations and reasons:

Attached _____ N/A _____

TITLE 81
LEGISLATIVE RULES
WEST VIRGINIA STATE POLICE

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SERIES 1
~~ADMINISTRATIVE RULES~~ SUPPLEMENTAL PAY

WEST VIRGINIA STATE POLICE
OFFICE OF THE CLERK

§81-1-1. General.

1.1. Scope. -- ~~These rules govern the administration of the West Virginia State Police. This rule establishes the number of hours per month which constitute the standard work month for members of the West Virginia State Police who are exempt from federal Fair Labor Standards Act guidelines and further designates the criteria for receipt of a portion or all of the supplemental payment when hours are worked in excess of the standard work month.~~

1.2. Authority. -- W. Va. Code ~~§15-2-25~~ §15-2-5

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Repeal of former rule - This legislative rule repeals and replaces 81CSR1 et seq., "Administrative Regulations Rules" filed on July 25, 1984 and effective July 25, 1984. May 21, 1998 and effective June 15, 1998.

~~§81-1-2. Operation of the West Virginia State Police.~~

~~2.1. Policy and procedure governing the internal management and operation of the department shall be contained within the department's Operational Policy and Procedure Manual.~~

~~2.2. Each member of the West Virginia State Police shall be issued a copy of the Operational Policy and Procedure Manual.~~

~~2.3. If any portion of the Operational Policy and Procedure Manual is amended, each member shall be issued a copy of the amendment.~~

~~2.4. Each member shall ensure that his or her Operational Policy and Procedure Manual contains all current operational policies and procedures.~~

~~2.5. To ensure the continued efficient operation of the organization, a department memorandum or teletype issued by authority of the Superintendent may temporarily amend or rescind any operational policy or procedure until a revised draft is issued. Department memoranda shall be issued at the direction of the Superintendent.~~

~~2.6. The enlistment, permanent transfer, promotion, demotion, suspension or discharge of members of the West Virginia State Police shall be effected by department special order. Department special orders shall be issued at the direction of the Superintendent.~~

~~2.7. Information to members may be disseminated either by department memorandum or department notice.~~

~~2.8. All members of the West Virginia State Police shall adhere to all policies, procedures, and rules governing the operation of the department. Failure to adhere to any specified policy, procedure, or rule may be punishable by counseling, reprimand, demotion, suspension with pay, suspension without pay or discharge.~~

~~**§81-1-3. Organizational Structure And Duties.**~~

~~3.1. This section relates to W. Va. Code §§15-2-2,3 &4.~~

~~3.2. The Superintendent shall serve as the executive and administrative head of the State Police. The Superintendent shall hold the rank of Colonel and shall be entitled to all rights, benefits and privileges of regularly enlisted members.~~

~~3.3. The Superintendent shall appoint from the enlisted membership of the State Police a Deputy Superintendent who shall hold the rank of Lieutenant Colonel and be next in authority to the Superintendent.~~

~~3.4. The term Executive Office shall encompass the following: (1) Superintendent, (2) Deputy Superintendent, (3) Officer in Charge of Support Services, (4) Officer in Charge of Field Operations, (5) Inspector, and (6) such other offices as the Superintendent deems necessary.~~

~~3.5. The Deputy Superintendent shall serve as the principal coordinator of department field operations and support services functions. The Deputy Superintendent shall perform other duties as may be assigned by the Superintendent.~~

~~3.6. If the Superintendent is unable to discharge the powers and duties of his office, due to illness, disease, injury or any other cause or is absent from the geographical boundaries of West Virginia, the order of succession is as follows:~~

~~(a) Deputy Superintendent,~~

~~(b) The senior member of the Executive Office if the Superintendent and Deputy Superintendent are absent.~~

~~Whenever the Deputy Superintendent or the senior member succeeds to the Office of the Superintendent he shall exercise all the powers, functions, duties and responsibilities of the Superintendent.~~

~~3.7. The Superintendent shall appoint from the enlisted membership of the Department the number of officers and members necessary to operate and maintain the Executive Office.~~

~~3.8. The Officer in Charge of Support Services shall be responsible to the Superintendent for the coordination of all support services functions and the correlation of activities and duties of support services with those of field operations. The Officer in Charge of Support Services shall perform other duties as assigned by the Superintendent and/or Deputy Superintendent.~~

~~3.9. The Officer in Charge of Field Operations shall be responsible to the Superintendent for the planning, conducting and monitoring of all field operations and the correlation of activities and duties of field operations with those of staff services. The Officer in Charge of Field Operations shall perform other duties as assigned by the Superintendent and/or the Deputy Superintendent.~~

~~3.10. The Inspector shall be responsible to the Superintendent for ensuring that all members and civilian employees adhere to all policy and procedure governing the operation of the Department; the inspection of all Department owned, leased, rented or maintained structures; and, the inspection of all departmental records and reports. The Inspector shall serve as the Superintendent's principal point of contact regarding complaints filed against Department members or civilian employees. The Inspector shall submit to the Superintendent recommendations regarding the disposition of complaints. The Inspector shall perform other duties as assigned by the Superintendent.~~

~~3.11. Each Company Headquarters Staff shall consist of the Company Commander, Company Executive Officer, Company Logistics Officer, and other members and civilian employees the Superintendent deems necessary.~~

~~3.12. Each Company Commander shall be responsible for the planning, conducting and monitoring of all field operations occurring within his company. Each Company Commander shall be responsible for the correlation of the activities and duties of members and civilian employees assigned to his command with those of staff services.~~

~~3.13. Each Company Executive Officer shall perform duties assigned by his or her Company Commander. In the absence of the Company Commander, the Company Executive Officer shall serve as the Acting Company Commander and exercise all the powers, functions, duties and responsibilities of the Company Commander.~~

~~3.14. Each Company Logistics Officer shall perform duties assigned by his Company Commander. In the absence of the Company Commander and the Company Executive Officer, the Company Logistics Officer shall serve as the Acting Company Commander and shall exercise all the powers, functions, duties and responsibilities of the Company Commander.~~

~~3.15. Each District Headquarters Staff shall consist of the District Commander and other members and civilian employees the Superintendent deems necessary.~~

~~3.16. Each District Commander shall be responsible for the planning, conducting and monitoring of all field operations occurring within his district. Each District Commander shall be responsible for the correlation of the activities and duties of members and civilian employees assigned to his command with those of staff services. Each District Commander shall perform duties as assigned by his or her Company Commander.~~

~~3.17. Each Detachment Headquarters Staff shall consist of the Detachment Commander and other members and civilian employees the Superintendent deems necessary.~~

~~3.18. Each Detachment Commander shall be responsible for the planning, conducting and monitoring of all field operations occurring within his or her detachment's area of operations. Each Detachment Commander shall be responsible for the correlation of the activities and duties of members and civilian employees assigned to his command with those of~~

~~support services. Each Detachment Commander shall perform duties assigned by his or her District Commander.~~

~~§81-1-4 Transfer.~~

~~4.1. This section relates to West Virginia Code section twenty, article two, chapter fifteen.~~

~~4.2. Definitions. --- For purposes of this section:~~

~~(a) Intercompany means to a different company.~~

~~(b) Intracompany means within the member's company.~~

~~(c) Involuntary transfer means a transfer that is not at the request or with the consent of the member.~~

~~(d) Operational needs shall encompass, consideration of officer safety, the department's ability to provide services, the member's performance and ability, supervisory evaluation of member's suitability, change in mission or mission priority, department resources and budget management, and/or other reasonable factors.~~

~~(e) Permanent means more than sixty (60) days.~~

~~(f) Temporary means sixty (60) or less than sixty (60) days.~~

~~(g) Transfer means assignment from one (1) field operation station to another field operation station.~~

~~(h) Voluntary transfer means a transfer at the request of or with the consent of the member.~~

~~4.3. To meet operational needs, when any member of the department is to be involuntarily and permanently transferred, the member shall be notified in writing of the proposed transfer at least fifteen (15) calendar days prior to the effective date of such transfer. The Superintendent shall not be required to give notice if:~~

~~(a) the transfer is voluntary; or~~

~~(b) the result of a promotion to a supervisory rank, or~~

~~(c) the result of a member's request for appointment to a support specialist position; or~~

~~(d) at the request of or is waived by the member who is to be transferred.~~

~~The day the notice is given shall not be counted in the fifteen (15) days' notice requirement. Oral notification shall suffice to temporarily transfer a member inter or intracompany; oral notification shall be confirmed in writing. Company commanders are authorized to initiate intracompany temporary transfers.~~

~~4.4. A department special order shall be used to effect a permanent transfer. Department special orders shall be issued at the direction of the Superintendent.~~

~~4.5. If a transfer is grieved pursuant to 81 CSR 8 et seq., the transfer under consideration shall not occur prior to the decision of level III grievance evaluator, or if appealed from level III, the level IV hearing examiner.~~

~~4.6. If the grievance is denied by either the level III grievance evaluator, or in the case of an appeal to level IV hearing examiner, the transfer shall be effective upon the issuance of the grievance evaluator's or hearing examiner's decision.~~

~~4.7. Whenever any member of the Department is transferred in excess of sixty (60) calendar days, reasonable and necessary transportation expenses actually incurred in moving the household furniture and effects of the member and his immediate family shall be paid by the Department. Such moving expenses shall be encumbered in compliance with special orders. The provisions of this subsection shall apply if the transfer is requested by the member.~~

~~4.8. If the member transferred owns and resides in a mobile home, the Department shall pay reasonable and necessary transportation expenses actually incurred in moving such mobile home. **Provided,** That such expenses do not exceed the amount which would have been paid for moving an equivalent amount of household furniture and effects had the member not owned and resided in a mobile home. The provisions of this subsection shall apply if the transfer is requested by the member.~~

~~4.9. If a transfer for a period in excess of sixty (60) calendar days necessitates the relocation of the involved member's family, the member shall be entitled to a relocation allowance of three hundred dollars (\$300) which shall be paid by the Department. When a member relocates from state owned or~~

~~leased property to state owned or leased property such payment shall not be made.~~

~~4.10. Members of the Department shall not be restricted from residing in a county other than that in which they are stationed except that the Superintendent may promulgate by appropriate written regulation to be applied uniformly throughout the Department a restriction as to either the number of miles distant from his station which a member may reside or the time necessary under ordinary traffic conditions for a member to travel between his residence and station.~~

~~§81-1-5~~ §81-1-2 Overtime Compensation Supplemental Pay.

~~5.1.~~ 2.1. This section relates to West Virginia Code section five, article two, chapter fifteen.

~~5.2.~~ 2.2. The standard work month for the West Virginia State Police members who are exempt from overtime pursuant to the provisions of the Federal Fair Labor Standards Act shall consist of ~~one hundred eighty-one (181)~~ one hundred seventy-three (173) hours.

~~5.3.~~ 2.3. Members of the West Virginia State Police who are exempt, with the exception of the Superintendent and civilian employees, shall receive the following percentages of the maximum supplement for the equivalent number of hours worked in excess of the standard work month:

| EXCESS | TOTAL MONTHLY | |
|-------------|--|------|
| 1-5 hours | 182 <u>174</u> to & incl. 186 <u>178</u> | 25% |
| 6-10 hours | 187 <u>179</u> to & incl. 191 <u>183</u> | 50% |
| 11-15 hours | 192 <u>184</u> to & incl. 196 <u>188</u> | 75% |
| 16 or more | 197 <u>189</u> or more | 100% |

~~5.4.~~ 2.4. Credit for a normal workday of 8 hours shall be given in computing the number of hours worked per month for any legal holiday (HOD) or compensatory day (CDO) in lieu thereof; any day of annual leave (AWL), sick leave (SIQ), work related disability leave (DL), or administrative leave (AAL), as defined in West Virginia State Police Operational Policy and Procedure, taken within the month for which the computation is made. Credit for a normal workday of 8 hours shall also be given in computing the number of hours worked per month for any compensatory day (CDO) taken in lieu of a day off duty lost ~~in either of the two (2) months immediately preceding the month for which the compensation is made.~~ Credit for a normal workday shall not be given for customary days off duty (DOD) or for any make up days (MUD) in lieu thereof.

~~5.5.~~ 2.5 Personal knowledge and/or individual monthly activity reports shall serve as the basis for the Superintendent's monthly certification of those members who are eligible for receipt of the monthly supplement set forth above.