

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

Form #4

FILED

SEP 30 2 49 PM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: West Virginia State Police TITLE NUMBER: 81

CITE AUTHORITY: W. Va. Code 15-2-5

AMENDMENT TO AN EXISTING RULE: YES NO "Repeal & Replace"

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

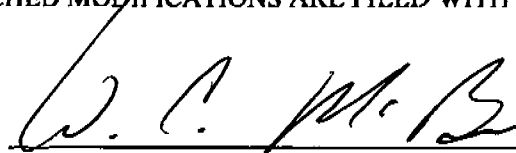
TITLE OF RULE BEING AMENDED: Administrative Rules

(new title "Supplemental Pay")

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

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


Authorized Signature

\$2.60

TITLE 81
LEGISLATIVE RULES
WEST VIRGINIA STATE POLICE

SERIES 1
SUPPLEMENTAL PAY

§81-1-1. General.

1.1. Scope. -- 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 §15-2-5

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Repeal of former rule - This legislative rule repeals and replaces West Virginia State Police Administrative Rule 81CSR1 filed on May 21, 1998 and effective June 15, 1998.

§81-1-2 Supplemental Pay.

2.1. 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 consists of one hundred seventy-three (173) hours.

2.2. Members of the West Virginia State Police who are exempt from overtime pursuant to the provisions of the Federal Fair Labors Standards Act, 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	174 to & incl. 178	25%
6-10 hours	179 to & incl. 183	50%
11-15 hours	184 to & incl. 188	75%
16 or more	189 or more	100%

2.3. 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 of a legal holiday; 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. Credit for a normal workday shall not be given for customary days off duty (DOD) or for any make up days (MUD) in lieu of customary days off duty.

2.4 The Superintendent shall base the monthly certification of those members who are eligible for receipt of the monthly supplement set forth in subsection 2.2 of this rule upon personal knowledge and/or individual monthly activity reports.



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SEP 23 10 24 AM '98

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

State Capitol - Room MB-49
Charleston, West Virginia 25305
(304) 347-4840

Senator Mike Ross, Co-Chairman
Delegate Mark Hunt, Co-Chairman
Debra A. Graham, Counsel

Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Teri Anderson, Administrative Assistant

September 23, 1998

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Colonel Gary L. Edgell
WV State Police
725 Jefferson Road
South Charleston, WV 25309

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Supplemental Pay, 81CSR1**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

- 1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency
- 2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
- 3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.



FILED

SEP 23 10 24 AM '98

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
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*State Capitol - Room MB-49
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September 23, 1998

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: 1/Sergeant C.R. Blankenship
WV State Police
725 Jefferson Road
South Charleston, WV 25309

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Supplemental Pay, 81CSR1**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

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4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: West Virginia State Police

Subject: Supplemental Pay, 81CSR1

PERTINENT DATES

Filed for public comment: July 1, 1998
Public comment period ended: July 31, 1998
Filed following public comment period: August 3, 1998
Filed LRMRC: August 3, 1998
Filed as emergency:

Fiscal Impact: None

OFFICE OF THE CLERK
SECRETARY OF STATE
WEST VIRGINIA

SEP 4 9 33 AM '98

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ABSTRACT

The proposed rule repeals and replaces a current legislative rule. Enrolled HB 4016 which passed during the 1988 Session required that the State Police's organizational structure be established through an interpretive rule. Provisions relating to the State Police's organizational structure have been delete from the proposed legislative rule. Provisions regarding the operation of the State Police have been moved to a new rule which is before the Committee. The following is a section by section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 relates to supplemental pay. It differs from the current legislative rule in that the standard work month for members has been reduced from 181 hours to 173 hours. The percentage of the maximum supplement allowed has been amended accordingly.

AUTHORITY

Statutory authority: W.Va. Code, §15-2-5, which provides, in part, as follows:

...The superintendent shall, within thirty days after the effective date of this section, propose a legislative rule for promulgation in accordance with article three, chapter twenty-nine-a of this code, to establish the number of hours per month which constitute the standard work month for the members of the West Virginia state police. The rule shall further establish, on a graduated hourly basis, the criteria for receipt of a portion or all of supplemental payment when hours are worked in excess of the standard work month...

The supplemental payment may not exceed two hundred thirty-six dollars monthly. The superintendent and civilian employees of the West Virginia state police are not eligible for any supplemental payments...

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has technical modifications to suggest.