

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

FILED

Filing Date

AUG 11 ~~11~~ 25 PM '97

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Effective Date

Effective
September 22, 1997

NOTICE OF AN EMERGENCY RULE

AGENCY: WEST VIRGINIA STATE POLICE TITLE NUMBER: 81

CITE AUTHORITY: W. Va. Code 15-2-25

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 2

TITLE OF RULE BEING AMENDED: CADET SELECTION

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: N/A

TITLE OF RULE BEING FILED AS AN EMERGENCY: N/A

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

Recently passed federal legislation makes it a crime for an individual to own or otherwise possess firearms and/or ammunition if said person has been convicted of a "misdemeanor crime of domestic violence."

SEE EMERGENCY JUSTIFICATION


Signature

Use additional sheets if necessary

\$6.80



West Virginia State Police
725 Jefferson Road
South Charleston, West Virginia 25309-1698
Executive Office

Cecil H. Underwood
Governor

Colonel Gary L. Edgell
Superintendent

MEMORANDUM

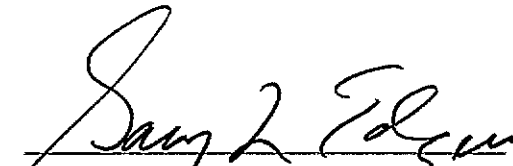
TO: Secretary of State
Legislative Rule Making

FROM: Gary L. Edgell, Superintendent
West Virginia State Police

DATE: August 4, 1997

RE: Agency Approval of Emergency Filing of Amendments
to Existing Legislative Rule Dealing with Cadet Selection

I hereby authorize emergency filing of the attached amendments to the existing Legislative Rule.


Signature (Agency Head)

DATE: August 11, 1997

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia State Police

EMERGENCY RULE TITLE: CADET SELECTION

1. Date of Filing August 11, 1997
2. Statutory authority for promulgating emergency rule:
W. Va. Code 15-2-25
3. Date of filing of proposed legislative rule: June 12, 1997
4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule?
The emergency rule adopts new language.
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.
Recently passed federal legislation makes it a crime for an individual to own or otherwise possess firearms or ammunition if said person has been convicted of a "misdemeanor crime of domestic violence." Therefore, to ensure the State Police does not hire an individual, as a Cadet (future Trooper), whom cannot carry a firearm, it is necessary to file the proposed rule as emergency.
SEE EMERGENCY JUSTIFICATION

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.

18 U.S.C. 922(d)(9) and (g)(9) - See Attachment A

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

SEE EMERGENCY JUSTIFICATION

**TITLE 81
LEGISLATIVE RULE
WEST VIRGINIA STATE POLICE
SERIES 2**

CADET SELECTION

**EMERGENCY RULE FILING
JUSTIFICATION**

Agency: West Virginia State Police
Rule: Cadet Selection
Authority: W. Va. Code §§15-2-2 & 15-2-25
Title: 81
Series: 2

PERTINENT DATES

Filed for public comment:	June 12, 1997
Public comment period ended:	July 14, 1997
Filed following public comment period:	July 17, 1997
Filed LRMRC:	July 17, 1997
Filed as emergency:	August 11, 1997
Fiscal impact:	NONE
Number of comments received:	ZERO

Summary of Rule

This rule establishes and explains the processes and qualifications involved in Cadet Selection for the State Police including, but not limited to, physical standards, medical standards, testing procedures, background investigations, and oral interview boards.

Justification

The proposed rule amends a currently existing rule. However, we are proposing filing this rule as an emergency rule. The current rule allows, but does not mandate, an applicant to be rejected from employment consideration if that individual has a previous domestic violence conviction. However, if a person with a previous domestic violence conviction was hired by the West Virginia State Police, recently passed federal legislation (See Attachment A) would prohibit that person from possessing a firearm and/or ammunition. This would severely restrict that officer's ability to carry on the duties of a State Trooper.

"[A]n emergency exists when the promulgation of an emergency rule is necessary . . . (3) to prevent substantial harm to the public interest." W. Va. Code §29A-3-15(f) (Supp. 1997). The State Police believes that it is in the public's interest for uniformed members of the West Virginia State Police to have the authority to carry firearms while on duty. This insures that the state police can fulfill its mission of providing "citizen protection from criminal depredation." W. Va. Code §15-2-12 (Supp. 1997). Without the immediate ability to reject applicants with prior domestic violence convictions from employment consideration, a situation may arise where a uniformed member is unable to carry a firearm. Granting emergency status to this rule would serve to prevent substantial harm to the public by ensuring that Troopers are adequately equipped to protect and serve the public.

ATTACHMENT A

UNITED STATES CODE ANNOTATED
TITLE 18. CRIMES AND CRIMINAL PROCEDURE
PART I--CRIMES
CHAPTER 44--FIREARMS

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Current through P.L. 105-15, approved 5-15-97

s 922. Unlawful acts

(a) It shall be unlawful--

(1) for any person--

(A) except a licensed importer, licensed manufacturer, or licensed dealer to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce; or

(B) except a licensed importer or licensed manufacturer, to engage in the business of importing or manufacturing ammunition, or in the course of such business, to ship, transport, or receive any ammunition in interstate or foreign commerce;

(8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place a intimate partner in reasonable fear of bodily injury to the partner or child except that this paragraph shall only apply to a court order that--

(A) was issued after a hearing of which such person received actual notice and at which such person had the opportunity to participate; and

(B)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) has been convicted in any court of a misdemeanor crime of domestic violence.

This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensee dealer, or licensed collector who pursuant to subsection (b) of section 925 this chapter is not precluded from dealing in firearms or ammunition, or to person who has been granted relief from disabilities pursuant to subsection

(2) It shall be unlawful for any common or contract carrier to deliver in interstate or foreign commerce any firearm without obtaining written acknowledgement of receipt from the recipient of the package or other container in which there is a firearm.

(g) It shall be unlawful for any person--

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802))

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) who, being an alien, is illegally or unlawfully in the United States;

(6) who has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) who is subject to a court order that--

(A) was issued after a hearing of which such person received actual notice and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence,

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(h) It shall be unlawful for any individual, who to that individual's knowledge and while being employed for any person described in any paragraph subsection (g) of this section, in the course of such employment--

(1) to receive, possess, or transport any firearm or ammunition in or

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: CADET SELECTION PHYSICAL QUALIFICATIONS

Type of Rule: X Legislative Interpretive Procedural

Agency WEST VIRGINIA STATE POLICE

Address 725 Jefferson Rd.

S. Charleston, WV 25309-1698

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	HEREAFTER
ESTIMATED TOTAL COST	\$ -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 result in no costs to our agency.

3. Objectives of these rules:

To establish and explain the process and qualifications involved in Cadet selection for the State Police including, but not limited to, physical standards, medical standards, testing procedures, background investigations, and oral interview boards.

Rule Title: CADET SELECTION PHYSICAL QUALIFICATIONS

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: 6-12-97

Signature of Agency Head or Authorized Representative

St. Col. Gary H. Griffith

**TITLE 81
LEGISLATIVE RULE
WEST VIRGINIA STATE POLICE**

**SERIES 2
CADET SELECTION PHYSICAL QUALIFICATIONS**

§81-2-1. General.

1.1. Scope. -- This rule establishes and explains the process and qualifications involved in Cadet selection for the State Police including, but not limited to, physical standards, medical standards, testing procedures, background investigations, and oral interview boards.

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

1.3. Filing Date. --

1.4. Effective Date. --

§81-2-2. General Rules of Cadet Selection.

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

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 pursuant to W.Va. Code §15-2-7(c). A resident is a person who either,

(a) is currently domiciled in West Virginia and has been domiciled in West Virginia for the previous two years, or

(b) was born in the state of West Virginia.

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

2.4. The State Police 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.

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 State Police, 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 or her designee as determined by position availability, funding, and other factors.

2.8. The State Police is an equal opportunity employer.

§81-2-3. 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 Superintendent and/or the Cadet Selection Board may shall reject an applicant for the following ~~or other conditions or circumstances~~:

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

3.2.2. the applicant has been convicted of a felony crime,

3.2.3. the applicant ~~had~~ has made a false statement of material fact or has misrepresented his or her qualifications in the application or subsequent background investigation,

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

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

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

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

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

3.2.9. ~~the applicant has been rejected during any phase of the selection process and at least three (3) former employers state that they would not re-employ the condition or circumstance causing applicant, or otherwise indicate that the rejection still exists applicant's services as an~~

~~employee were unsatisfactory, or that the applicant is lacking in character,~~

~~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 not eligible to work in character the United States,~~

~~3.2.11. the applicant is has not eligible possessed a valid driver's license for two years prior to work in the United States making application,~~

~~3.2.12. the applicant has not possessed a valid driver's license for two years prior to making application,~~

~~3.2.13. the applicant has any convictions for a serious traffic offense (e.g. driving while intoxicated, negligent homicide, etc.),~~

~~3.2.14~~

~~3.2.13. the applicant has any domestic violence convictions for misdemeanor crimes involving persons or property,~~

~~3.2.15 or~~

~~3.2.14. the applicant has any type or method of body art that would be normally observable while wearing any State Police uniform,~~

~~3.2.16 detects or discerns, at any stage of the process, any condition or circumstance involving the applicant that may impair the applicant's ability to perform the duties attendant to the position of state police officer.~~

~~the applicant has otherwise violated provisions of this rule, or~~

~~3.2.17 3.3. the State Police detects or discerns any condition or circumstance involving the applicant that The Superintendent and/or Cadet Selection Board may grossly impair the applicant's ability to perform the duties attendant to the position of state police officer reject an applicant for the following, or other conditions or circumstances:~~

~~3.3.1 3.3 the applicant has been rejected during any phase of the selection process and the condition or circumstance causing the rejection still exists,~~

~~3.3.2. the applicant has any convictions for misdemeanor crimes involving persons or property,~~

~~3.3.3. the applicant has any type or method of body art or piercing that would be normally observable while wearing any State Police uniform, or~~

~~3.3.4. the applicant has otherwise violated provisions of this rule.~~

3.4. The State Police will notify applicants by U. S. Mail or by other means considered expedient by the Personnel Section of the acceptance or rejection of their application.

§81-2-4. Applicant Screening Initial Stage.

4.1. The State Police will notify qualified applicants by U. S. Mail, or by other means considered expedient by the Personnel Section, of the date, time, and location to appear for the initial applicant screening.

4.2. The applicant must successfully complete a series of written examinations and physical fitnessability tests to determine suitability for training.

4.3. The physical fitnessability tests will consist of:

4.3.1. Sit-ups or crunches (Muscular Endurance) - the score is the number of bent-leg sit-ups or crunches 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-ups (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 State Police based on either generally accepted fitness standards or through a study of the fitness level of incumbent State Police members.

4.4. Applicants will be notified by ~~U~~selected based on position availability, funding, and other factors. ~~S~~Selected applicants will be notified by U. Mail or other means considered expedient by the Personnel Section whether or not they successfully completed the written and physical examinations. ~~S~~ Following successful completion of the initial screening stage, applicants will be notified ~~Mail or other means considered expedient by U~~the Personnel Section of the date, time, and location to appear for an Oral Interview. ~~S~~ Mail, or by other means considered expedient by the Personnel Section, of the date, time, and location to appear for an Oral Interview.

§81-2-5. Interview Stage.

5.1. The applicant shall appear before an Interview Board. The Superintendent or his or her

designee may authorize multiple interview boards each of which shall be staffed by three State Police members.

5.2. Following the Interview Board, the Cadet Selection Board shall compile a list of applicants.

§81-2-6. Background Investigation Stage.

6.1. The Cadet Selection Board shall select applicants from the list compiled following the Interview Board, based on projected or actual position availability and other factors, for a background investigation. Applicants will be notified by U. S. Mail or by other means considered 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 State Police 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;

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

6.2.3. Inquiries into the applicant's criminal, driving, and credit history;

6.2.4. Inquiries into the applicant's military background;

6.2.5. Inquiries regarding civil suits naming the applicant; and

6.2.6. Inquiries into the applicant's educational background and performance.

6.3. Applicants shall submit to a polygraph examination.

6.4. The Cadet Selection Board shall review the background investigations and eliminate those applicants who have conditions and/or circumstances in their backgrounds that meet any of the automatic disqualification criteria, or which indicate that the applicant's ability to perform the duties attendant to the position of state police officer would be grossly impaired.

§81-2-7. 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. Applicants will be selected based on position availability, funding, and other factors. Selected 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 the equivalent.

7.3. The Cadet Selection Board shall eliminate those applicants whose psychological test profiles reveal that the applicant is unfit not suited for duty as a state police officer.

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

§81-2-8. Medical Selection Stage.

8.1. The remaining applicants shall submit to a medical examination by a licensed physician chosen by, and at the expense of the State Police.

8.2. The applicant shall complete a comprehensive medical history questionnaire, supplied by the State Police, 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. The following conditions may be cause to exclude an applicant from consideration for employment, except where specifically noted;

8.2.1. Eyes and Vision

~~8.2.1.1. Visual Acuity - An applicant's far visual acuity uncorrected distant vision may be equal to but not worse than 20/100 in the weaker eye, and, shall be at least 20/30 binocular with contact lenses correctable to better than, or spectacles equal to 20/30 (Snellen) in each eye. Successful long-term soft contact lens wearers (six months without a problem) are not subject to the uncorrected standard. Sufficient time must have passed (six months) to allow stabilization of visual acuity and to ensure that there are no post-surgical complications for applicants who have undergone ophthalmological procedures such as radial keratotomy or repair of retinal detachment. 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, or air, or blood borne pathogen masks, etc.~~

~~8.2.1.1.1 Far visual acuity shall be at least 20/30 binocular with contact lenses or spectacles. Far visual acuity uncorrected shall be at least 20/100 binocular for wearers of hard contacts or spectacles. Successful long-term soft contact lens wearers (six months without a problem) are not subject to the uncorrected standard.~~

~~8.2.1.1.2 Ophthalmological procedures such as radial keratotomy, repair or retinal detachment. Sufficient time (i.e., six months) must have passed to allow stabilization of visual acuity and to ensure that there are no postsurgical complications.~~

8.2.1.2. Visual Acuity - Color Vision: The applicant must pass a "controlled color discrimination test", e.g. United States Department of Transportation Color Vision Examination.

8.2.1.3. Visual Acuity - Depth Perception: An applicant's depth perception should be

sufficient to demonstrate normal stereo depth perception with or without correction to the standard: 80 ARC seconds.

8.2.1.4. 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.

8.2.2. Ears and Hearing

8.2.2.1. 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.

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

8.2.2.3. 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.

8.2.3. Nose, Throat, and Mouth

8.2.3.1. Loss of Sense of Smell.

8.2.3.2. Aphonia, Speech Loss or Speech Defects.

8.2.3.3. 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.

8.2.4. Peripheral Vascular System

8.2.4.1. Hypertension - An applicant's 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 this 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 cause the applicant to be excluded.) 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.

8.2.4.2. Peripheral Vascular Abnormality - any condition which is severe and/or symptomatic may cause the applicant to be excluded, e.g. arterial insufficiency, deep or superficial vein thrombophlebitis, Reynaud's disease.

8.2.5. Heart and Cardiovascular System

8.2.5.1. Congenital Heart Disease - if the applicant's functional work capacity is unimpaired, then the condition may not cause the applicant to be excluded.

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

8.2.5.3. Coronary Artery Disease.

8.2.5.4. 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.

8.2.5.5. Angina.

8.2.5.6. Congestive Heart Failure.

8.2.5.7. Cardiomyopathy.

8.2.5.8. Pericarditis, Endocarditis, and Myocarditis.

8.2.6. Respiratory System

8.2.6.1. The applicant's 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.

8.2.6.2. Infectious or Potentially Infectious Pulmonary Tuberculosis.

8.2.6.3. Chronic Bronchitis.

8.2.6.4. Chronic Obstructive Pulmonary Disease.

8.2.6.5. Emphysema.

8.2.6.6. Restrictive Lung Diseases.

8.2.6.7. Bronchiectasis and Pneumothorax (current or repeated history)

8.2.6.8. Pneumonectomy.

8.2.6.9. Acute Mycotic Diseases - including, but not limited to, Coccidioidomycosis and

Histoplasmosis.

8.2.6.10. Acute Pleurisy.

8.2.6.11. 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.

8.2.7. Gastrointestinal System

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

8.2.7.2. Diverticulitis.

8.2.7.3. 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.

8.2.7.4. Pancreatitis.

8.2.7.5. Gall Bladder Disorders.

8.2.7.6. Active Peptic Ulcers.

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

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

8.2.7.9. Gastrointestinal Bleeding.

8.2.7.10. Active or Chronic Hepatitis.

8.2.7.11. Cirrhosis of the Liver.

8.2.7.12. Motility Disorders, e.g. Scleroderma.

If any of the above or gastro-intestinal conditions are controlled, then they may not cause the applicant to be excluded.

8.2.8. Genitourinary System

8.2.8.1. 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.

8.2.8.2. Pregnancy - the examining physician should record if the applicant is pregnant.

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

8.2.8.4. Acute Nephritis.

8.2.8.5. Nephrotic Syndrome.

8.2.8.6. Acute Renal/Urinary Calculi.

8.2.8.7. Renal Transplant.

8.2.8.8. Renal Failure.

8.2.8.9. Hydrocele and Varicocele (Symptomatic).

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

8.2.8.11. Active Venereal Diseases.

8.2.8.12. Urinary Tract Infection.

8.2.8.13. Polycystic Kidney Disease.

8.2.8.14. Pelvic Inflammatory Disorders.

8.2.8.15. Endometriosis.

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

8.2.8.17. Scleroderma.

8.2.9. Endocrine and Metabolic Systems

8.2.9.1. Uncontrolled Thyroid Disease.

8.2.9.2. Diabetes Mellitus - potential excludability requires a case by case assessment by a physician designated by the State Police as to the control of diabetes and presence and severity of symptoms and complications.

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

8.2.9.4. Insulin Reactions.

8.2.9.5. Untreated Thyroid Malignancy.

8.2.10. Musculoskeletal System

8.2.10.1. 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.

8.2.10.2. Disorders that Limit Motor Function.

8.2.10.3. Cervical Spine or Lumbosacral/Lumbosacral Fusion.

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

8.2.10.5. Extremity Amputation.

8.2.10.6. Osteomyelitis.

8.2.10.7. Muscular Dystrophy.

8.2.10.8. 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.

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

8.2.10.10. Coordinated Balance.

8.2.10.11. Symptomatic Herniated Disc.

8.2.10.12. Spinal Deviations.

8.2.11. Hematopoietic and Lymphatic Systems

8.2.11.1. Hematopoietic Disorders (including malignancies), e.g. SCD, thalassemia, G6PD, etc.

8.2.11.2. Hemophilia.

8.2.12. Nervous System

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

8.2.12.2. Seizure Disorder (all types).

8.2.12.3. Cerebral Palsy.

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

8.2.12.5. Cerebral Aneurysms.

8.2.12.6. Syncope.

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

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

8.2.12.9. Narcolepsy.

8.2.12.10. Cerebral Vascular Accident.

8.2.12.11. Central Nervous System Infections.

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

8.3. The Cadet Selection Board may exclude those applicants who, in the 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 Cadet Selection Board shall remove those applicants excluded during the medical screening stage, and present a rank ordered list to the Superintendent.

§81-2-9. Final Selection Stage.

9.1. In conformity to W. Va. Code §15-2-7(b), the Superintendent shall appoint an applicant 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 may be retained on a standing list for no more than twelve months.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

JAN CASTO
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000
FAX: (304) 558-0900



STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations

(Plus all the volunteer
help we can get)

September 22, 1997

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE


AGENCY: West Virginia State Police

RULE: Amendment, Series 2, Cadet Selection

DATE FILED AS AN EMERGENCY RULE: August 11, 1997

DECISION NO. 11-97

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



KEN HECHLER
Secretary of State

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SEP 22 11 31 AM '97

FILED

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

JAN CASTO
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000
FAX: (304) 558-0900



WILLIAM H. HARRINGTON
Chief of Staff

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Director, Administrative Law

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Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

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**EMERGENCY RULE DECISION
(ERD 11-97)**

AGENCY: West Virginia State Police
RULE: Series 2, Amendments, Cadet Selection
FILED AS AN EMERGENCY RULE: August 11, 1997

- par. 1 The West Virginia State Police (State Police) has filed the above amendments to an existing rule as an emergency 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].
- 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 emergency rule decision 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 State Police filed this emergency rule with supporting documents with the Secretary of State August 11, 1997 and with the LRMRC August 11, 1997.

par. 7 It is the determination of the Secretary of State that the State Police 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 §15-2-25 in part reads:

Subject to the written approval of the governor and the provisions of this article, the superintendent may make and promulgate proper rules and regulations for the government, discipline and control of the division of public safety, and shall also cause to be established proper rules and regulations for the examinations of all applicants for appointment thereto. The members of the division of public safety shall be permitted to carry arms and weapons and no license shall be required for such privilege.

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

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

(f) 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 the State Police are as follows:

The proposed rule amends a currently existing rule. However, we are proposing filing this rule as an emergency rule. The current rule allow, but does not mandate, an applicant to be rejected from employment consideration if that individual has a previous domestic violence conviction. However, if a person with a previous domestic violence conviction was hired by the West Virginia State Police, recently passed federal legislation would prohibit that person from possessing a firearm and/or ammunition. This would severely restrict that officer's ability to carry on the duties of a State Trooper.

"An emergency exists when the promulgation of an emergency rule is necessary...(3) to prevent substantial harm to the public interest." W. Va. Code §29A-3-15(f). The State Police believes that the public interest's for uniformed members of the WV State Police to have the authority to carry firearms while on duty. This insures that the state police can fulfill its mission of providing "citizen protection from criminal depredation." W. Va. Code §15-2-12. Without the

immediate ability to reject applicants with prior domestic violence convictions from employment consideration, a situation may arise where a uniformed member is unable to carry a firearm. Granting emergency status to this rule would serve to prevent substantial harm to the public by ensuring that Troopers are adequately equipped to protect and serve 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(f)..."to prevent substantial harm to the public."

par. 14 This decision shall be cited as Emergency Rule Decision 11-97 or ERD 11-97 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the West Virginia State Police, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

Entered _____

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SEP 22 11 31 AM '97

FILED