

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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FILED

JUN 23 9 49 AM '95

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: West Virginia State Police TITLE NUMBER: 81

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

AMENDMENT TO AN EXISTING RULE: YES NO

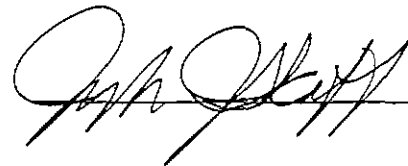
IF YES, SERIES NUMBER OF RULE BEING AMENDED: II

TITLE OF RULE BEING AMENDED: Cadet Physical Qualifications

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

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



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Circumstances Requiring Repeal of Rule

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

1) During the 1991 Legislative Session, the former Department of Public Safety Retirement Board was eliminated by statute and replaced with the Consolidated Public Employees Retirement Board. The Public Safety Board had previously been empowered to promulgate standards for cadet selection; however, the legislature amended W. Va. Code §15-2-7(b) to transfer those responsibilities to a Cadet Selection Board appointed by the Division Superintendent. The proposed rule reflects these changes.

2) The Americans with Disabilities Act and the West Virginia Human Rights Act prohibits employer inquiries prior to employment regarding an applicant's medical or psychological health. The proposed rule eliminates the provision of the former rule allowing such inquiries.

3) The Law Enforcement Training Sub-Committee of the Governor's Committee on Crime, Delinquency, and Corrections sponsored a study which identified the essential job tasks of a state police officer and then analytically connected these tasks with certain medical and physical fitness standards. The standards outlined in this updated study are incorporated into the proposed rule and replace the former standards which did not meet the job-relatedness requirements of federal law.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: CADET SELECTION PROCESS

Type of Rule: X Legislative Interpretive Procedural

Agency Division of Public Safety

Address 725 Jefferson Road

 South Charleston, West Virginia 25309-1698

1. Effect of Proposed Rule

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

2. Explanation of above estimates:

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

3. Objectives of these rules:

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

Rule Title: CADET SELECTION PROCESS

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

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

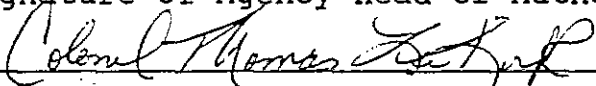
None

C. Economic Impact on Citizens/Public at Large.

None

Date: May 5, 1995

Signature of Agency Head or Authorized Representative



COLONEL THOMAS L. KIRK, SUPERINTENDENT

DATE: JUNE 14, 1995

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: WEST VIRGINIA STATE POLICE

LEGISLATIVE RULE TITLE: CADET PHYSICAL QUALIFICATIONS

1. Authorizing statute(s) citation W.VA. CODE 15-2-25

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

MAY 9, 1995

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

NONE

c. Date of Hearing(s) NO HEARING WAS REQUIRED.

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

SEE ABOVE COMMENT.

Attached **No comments received**

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

JUNE 23, 1995

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

SGT. STEPHEN W. COGAR (304) 746-2112

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

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

NO HEARING WAS REQUIRED.

b. Date of hearing: _____

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

d. Attach findings and determinations and reasons:

Attached _____

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Summary of Proposed Rule

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

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DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY JUN 23 9 49 AM '95
WEST VIRGINIA STATE POLICE
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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Title: Cadet Selection Process

Section 1. General

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

1.2 Authority - W. Va. Code §15-2-25.

1.3 Filing Date -

1.4 Effective Date -

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

Section 2. General Rules of Cadet Selection

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

2.2 Preference in making appointments shall be given whenever possible to honorably discharged members of the armed forces of the United States and to residents of West Virginia pursuant to W. Va. Code §15-2-7(c). A resident is a person who is currently domiciled in West Virginia and has been domiciled in West Virginia for the previous two years.

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

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

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

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

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

2.8 The Division is an equal opportunity employer.

Section 3. Application Stage

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

3.2 The Superintendent and/or the Cadet Selection Board may 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 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

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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 the condition or circumstance causing the rejection still exists,

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

3.2.11 the applicant is not eligible to work in the United States,

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

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

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

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

3.3 The Division 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.

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Section 4. Applicant Screening Initial Stage

4.1 The Division 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 fitness tests to determine suitability for training.

4.3 The physical fitness tests will consist of:

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

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

4.3.3 Push-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 Division based on either generally accepted fitness standards or through a study of the fitness level of incumbent Division members.

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

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Section 5. Interview Stage

5.1 The applicant 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 Division members.

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

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

- 6.2.1 Inquiries into the veracity of responses on the application;
- 6.2.2 Interviews with references supplied by the applicant, persons familiar with the applicant, and previous employers;
- 6.6.3 Inquiries into the applicant's criminal, driving, and credit history;
- 6.6.4 Inquiries into the applicant's military background;
- 6.6.5 Inquiries regarding civil suits naming the applicant; and
- 6.6.6 Inquiries into the applicant's educational background and performance.
- 6.6.7 Applicants shall submit to a polygraph examination.

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6.7 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.

Section 7. Psychological Assessment Stage

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

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

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

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

Section 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 Division.

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

8.3 Eyes and Vision

8.3.1 Visual Acuity - An applicant's uncorrected distant vision may be equal to but not worse than 20/100 in the weaker eye, and, shall be correctable to better than, or equal to, 20/30 (Snellen) in each eye. Means of correction must be worn on the job and must not interfere with proper fitting of a facial mask, e.g. gas mask, riot helmet, or air, or blood borne pathogen masks, etc.

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

8.3.3 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.

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

8.4 Ears and Hearing

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

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

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

8.5 Nose, Throat, and Mouth

8.5.1 Loss of Sense of Smell.

8.5.2 Aphonia, Speech Loss or Speech Defects.

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

8.6 Peripheral Vascular System

8.6.1 Hypertension - 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.

8.6.2 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, Raynaud's disease.

8.7 Heart and Cardiovascular System

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

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

8.7.3 Coronary Artery Disease.

8.8.4 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.

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8.8.5 Angina.

8.8.6 Congestive Heart Failure.

8.8.7 Cardiomyopathy.

8.8.8 Pericarditis, Endocarditis, and Myocarditis.

8.9 Respiratory System

8.9.1 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.

8.9.2 - Infectious or Potentially Infectious Pulmonary Tuberculosis.

8.9.3 Chronic Bronchitis.

8.9.4 Chronic Obstructive Pulmonary Disease.

8.9.5 Emphysema.

8.9.6 Restrictive Lung Diseases.

8.9.7 Bronchiectasis and Pneumothorax (current or repeated history)

8.9.8 Pneumonectomy.

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

8.9.10 Acute Pleurisy.

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

8.10 Gastrointestinal System

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

8.10.2 Diverticulitis.

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

8.10.4 Pancreatitis.

8.10.5 Gall Bladder Disorders.

8.10.6 Active Peptic Ulcers.

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

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

8.10.9 Gastrointestinal Bleeding.

8.10.10 Active or Chronic Hepatitis.

8.10.11 Cirrhosis of the Liver.

8.10.12 Motility Disorders, e.g. Scleroderma.

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

8.11 Genitourinary System

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

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8.11.2 Pregnancy - the examining physician should record that the applicant is a pregnant.

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

8.11.4 Acute Nephritis.

8.11.5 Nephrotic Syndrome.

8.11.6 Acute Renal/Urinary Calculi.

8.11.7 Renal Transplant.

8.11.8 Renal Failure.

8.11.9 Hydrocele and Varicocele (Symptomatic).

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

8.11.11 Active Venereal Diseases.

8.11.12 Urinary Tract Infection.

8.11.13 Polycystic Kidney Disease.

8.11.14 Pelvic Inflammatory Disorders.

8.11.15 Endometriosis.

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

8.11.17 Scleroderma.

8.12 Endocrine and Metabolic Systems

8.12.1 Uncontrolled Thyroid Disease.

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

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

8.12.4 Insulin Reactions.

8.12.5 Untreated Thyroid Malignancy.

8.13 Musculoskeletal System

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

8.13.2 Disorders that Limit Motor Function.

8.13.3 Cervical Spine or Lumbar Sacral Fusion.

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

8.13.5 Extremity Amputation.

8.13.6 Osteomyelitis.

8.13.7 Muscular Dystrophy.

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

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

8.13.10 Coordinated Balance.

8.13.11 Symptomatic Herniated Disc.

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8.13.12 Spinal Deviations.

8.14 Hematopoietic and Lymphatic Systems

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

8.14.2 Hemophilia.

8.15 Nervous System

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

8.15.2 Seizure Disorder (all types).

8.15.3 Cerebral Palsy.

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

8.15.5 Cerebral Aneurysms.

8.15.6 Syncope.

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

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

8.15.9 Narcolepsy.

8.15.10 Cerebral Vascular Accident.

8.15.11 Central Nervous System Infections.

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

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8.17 The Cadet Selection Board shall 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.

Section 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 be retained on a standing list for no more than twelve months.

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Report on Notice/Comment Period

The notice/comment period for this rule ran from May 9, 1995, until June 9, 1995, at noon. During that time, no oral or written comments were received. The proposed rule was not amended as a result of the notice/comment period. No public hearing was held regarding the rule. The rule has been amended to change all references to the Division of Public Safety to West Virginia State Police.