

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

Form #7

Filing Date

FILED

AUG 11 4 29 PM '97

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Effective Date

Disapproved
9-22-97

NOTICE OF AN EMERGENCY RULE

AGENCY: WEST VIRGINIA STATE POLICE TITLE NUMBER: 81

CITE AUTHORITY: W. Va. Code 15-2-5 and 15-2-25

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 3

TITLE OF RULE BEING AMENDED: WEST VIRGINIA STATE POLICE CAREER PROGRESSION SYSTEM

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:

See Attached Summary.

To ensure the most effective operation of the State Police, an obvious public interest, it is essential that the State Police can promote uniformed members to Supervisory ranks. Therefore, it is necessary to file the proposed rule as emergency.

[Signature]
Signature

Use additional sheets if necessary

\$9.40



West Virginia State Police
725 Jefferson Road
South Charleston, West Virginia 25309-1598
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 Promotions

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

A handwritten signature in cursive script, appearing to read "Gary L. Edgell".
Signature (Agency Head)

DATE: August 11, 1997

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia State Police

EMERGENCY RULE TITLE: WEST VIRGINIA STATE POLICE

1. Date of Filing August 11, 1997

2. Statutory authority for promulgating emergency rule:

W. Va. Code 15-2-5 and 15-2-25

3. Date of filing of proposed legislative rule: June 26, 1997

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule?

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.

To ensure the most effective operation of the State

Police, an obvious public interest, it is essential

that the State Police can promote uniformed members

to Supervisory ranks. Therefore, it is necessary to file

the proposed rule as emergency.

SEE ATTACHMENT

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

None Apply

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

See Attached Summary

TITLE 81
LEGISLATIVE RULE
WEST VIRGINIA STATE POLICE
SERIES 3

WEST VIRGINIA STATE POLICE CAREER PROGRESSION SYSTEM

EMERGENCY RULE FILING
JUSTIFICATION

Agency: West Virginia State Police
Rule: West Virginia State Police Career Progression System
Authority: W. Va. Code §§15-2-5 & 15-2-25
Title: 81
Series: 3

PERTINENT DATES

Filed for public comment:	June 26, 1997
Public comment period ended:	July 28, 1997
Filed following public comment period:	July 30, 1997
Filed LRMRC:	July 30, 1997
Filed as emergency:	August 11, 1997

Fiscal impact:	NONE
Number of comments received:	ZERO

Summary of Rule

This legislative rule governs the process by which all permanent promotions, all non-supervisory reclassifications, all criminalist reclassifications, and all administrative support reclassifications shall be achieved.

Justification

The proposed rule amends a currently existing rule. However, we are proposing filing this rule as an emergency rule. "The West Virginia division of public safety [West Virginia State Police] shall have the mission of statewide enforcement of criminal and traffic laws with emphasis on providing basic enforcement and citizen protection from criminal depredation throughout the state and maintaining the safety of the state's public streets, roads and highways." W. Va. Code §15-2-12. In order for the State Police to fulfill this mission it is essential that the agency have an adequate number of filled supervisory positions. These supervisory positions are filled by the use of the "Career Progression System." This system is set out in the West Virginia Code at §15-2-5. Additionally, the above-mentioned code authorizes the creation of legislative rules to carry out the process.

"[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). The State Police, having the responsibility of protecting the public from crime, believes that the public has an interest in the effective operation of the State Police. This effective operation can only be carried with a sufficient number of filled supervisory positions. Therefore, to ensure the most effective operation of the State Police, the State Police believes it would be in the public's best interest to file this rule as an emergency. Granting emergency status to this rule would serve to prevent substantial harm to the public by ensuring that the most up-to-date, formal, effective procedures are in place to promote members of the State Police.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: WVSP CAREER PROGRESSION SYSTEM

Type of Rule: **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	THEREAFTER
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 govern the process by which all permanent promotions, all non-supervisory reclassifications, all criminalist reclassifications, and all administrative support reclassifications shall be achieved.

Rule Title: WVSP CAREER PROGRESSION SYSTEM

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: 6-26-97

Signature of Agency Head or Authorized Representative

A. Col. Gary A. Saffitt

TITLE 81
LEGISLATIVE RULE
DIVISION OF PUBLIC SAFETY WEST VIRGINIA STATE POLICE

SERIES 3
WEST VIRGINIA STATE POLICE CAREER PROGRESSION SYSTEM

§81-3-1. General.

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

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

1.3. Filing Date. --

1.4. Effective Date. --

1.5. ~~Repeal of former rule. -- This legislative rule repeals and replaces West Virginia legislative rule, Department of Public Safety, Series 1, section 8, filed July 10, 1984.~~

§81-3-2. For the purposes of this rule.

2.1. ~~SuperintendentCriminalist classification means the superintendent of the Division of Public Safetygrade awarded to or his duly authorized agentachieved by a member within the criminalist classification system, inclusive of the classifications of criminalist I-VI and the temporary grade of VII awarded to section heads with a criminalist classification of VI.~~

2.2. ~~Senior staffGeneral knowledge examination means the eleven (11) principle supervisorya written examination of questions, relevant to the non-supervisory rank positions appointed by the superintendent as authorized by W.~~

2.3. Member means an employee of the divisiondepartment empowered under the provisions of W. Va. Code §15-2-12 with statewide law enforcement powers and who has taken and subscribed to the oath of office as required by W. Va. Code §15-2-14.

2.4. Inspector means that member of the division, designated by the superintendent, who is responsible to the superintendent for insuring that all members and civilian employees of the division adhere to all policy and procedures governing the operation of the division, the inspection of all division facilities and divisional records and reports.

2.5. ~~Personnel director means that member of the division, designated by the superintendent, who is responsible for the activities and operation of the division's personnel section.~~

2.6. ~~Permanent rank means that grade awarded to or achieved by a member within the~~

supervisory field promotional system, inclusive of the ranks of sergeant, first sergeant, second lieutenant and first lieutenant.

2.7. Non-supervisory rank means the grade awarded to or achieved by a member within the non-supervisory rank classification system, inclusive of the classifications of trooper, senior trooper, trooper first class and corporal.

2.8.2.5. Criminalist classification Employee evaluation means the grade awarded to or achieved by a member within the criminalist classification system, inclusive of the classifications of criminalist I-VII used by the West Virginia State Police to evaluate employee work performance.

2.9.2.6. Support specialist Permanent rank means the temporary that grade awarded to or achieved by a member within the administrative support specialist classification supervisory field promotion system, inclusive of the classifications ranks of support specialist I-VIII sergeant, first sergeant, second lieutenant and first lieutenant.

2.7. Personnel director means that person, designated by the Superintendent, who is responsible for the activities and operation of the department's personnel section.

2.8. Petition for reclassification means a form filed with the promotional standards officer requesting that a member be considered for reclassification.

2.9. Professional Standards section means that section, designated by the Superintendent as the custodian of the disciplinary files.

2.10. Promotional cycle means one (1) complete series of events required to establish a rank ordered list of eligible promotional candidates within the supervisory field promotional system.

2.1. General knowledge examination means a written examination of general questions; relevant to the non-supervisory rank positions.

2.11. Promotional examination means a written examination of questions relevant to the supervisory rank positions.

2.12. Promotional preference means those non-support specialist, supervisory field operation positions for which a member wishes promotional consideration.

2.13. Productivity evaluation Request for promotional consideration means the numerical representation of a form filed with the promotional standards officer expressing a member's activity relative intent to hours worked within the participate in a promotional cycle and indicating those non-support specialist, supervisory field operations force or the forensic laboratory operation positions for which the member wishes promotional consideration.

2.14. Request for promotional consideration Senior staff means a form filed with the promotional standards officer expressing a member's intent to participate in a promotional cycle the Deputy Superintendent and those principle supervisors appointed by the Superintendent

as authorized by W. Va. Code §15-2-4.

2.15. ~~Petition for reclassification~~ ~~Superintendent~~ means a petition filed with the promotional standards officer requesting that a member be considered for reclassification ~~the Superintendent of the West Virginia State Police or his/her duly authorized agent.~~

2.16. ~~Petition of justification~~ ~~Support specialist classification~~ means a petition, with accompanying justification, filed with an appropriate board requesting that a member retain eligibility status for promotion ~~the temporary grade awarded to or reclassification even though the member's productivity evaluation is below the required level achieved by a member within the administrative support specialist classification system, inclusive of the classifications of support specialist I-VIII.~~ This temporary grade has no effect upon a member's permanent rank, non-supervisory rank or criminalist classification.

§81-3-3. Career progression system - general requirements.

3.1. This rule is promulgated for the purpose of insuring consistency, predictability and review of the West Virginia State Police Career Progression System as authorized by W. Va. Code §15-2-5.

3.2. The career progression system shall consist of the following four (4) sub-systems.

3.2.1. The supervisory field promotion system, ~~hereinafter promotion system~~, a permanent rank system established to identify ~~rank in order~~ those members of the field operations force who possess ~~the skills, knowledge and abilities necessary~~ ~~desire~~ to perform within designated supervisory positions within the field operations force and to provide a mechanism for the ranking and selection of qualified individuals for promotion.

3.2.2. The non-supervisory rank classification system, a permanent classification system established to identify those members of the field operations force ~~non-criminalist members, below the rank of corporal~~, that meet required levels of achievement in productivity ~~employee~~ evaluations, demonstrated job knowledge and division ~~department~~ tenure, and to provide a series of progressive non-supervisory rank classifications for members who meet the minimum requirements and who cannot participate within the supervisory field promotional system or who elect to remain within the non-supervisory rank positions.

3.2.3. The criminalist classification system, a permanent classification system established to identify those members of the forensic laboratory that meet required levels of achievement in productivity ~~employee~~ evaluations, demonstrated job knowledge and laboratory tenure, and who receive the recommendation for advancement from appropriate supervisors and to provide a series of progressive criminalist classifications.

3.2.4. The administrative support specialist classification system, a temporary classification system established to identify those members who are permanently assigned to the field operations force or the forensic laboratory, who are designated by the superintendent ~~Superintendent~~ to occupy specific support positions and who have demonstrated proficiency and outstanding achievement in performing the duties and responsibilities of the support position and to provide a series of progressive administrative classifications.

3.3. The superintendentSuperintendent shall appoint a member to the position of promotional standards officer who shall have the authority and responsibility for administering the career progression system. HisHis/her duties shall include:

3.3.1. The maintaining of individual status files for every member within the system;

3.3.2. Providing notice as required on behalf of the superintendentSuperintendent or any system board.

3.3.3. Receive all requests for promotional consideration,petitions for reclassification and petitions of justificationfor reclassification on behalf of the superintendentSuperintendent or any system board;

3.3.4. Review any candidate challenges to promotional examination questions;

3.3.5. Coordination of the activities of all career progression system sub-systems and the system's appeal procedures;

3.3.6. Providing direct contact to all divisiondepartment members concerning the career progression system;

3.3.7. DevelopmentCoordinate the development and implementation of Career Progression System Evaluation Board procedures; and

3.3.8. Reviewing, evaluating and coordinating any recommendations for system improvements as provided by the Selection and Review Board and as approved by the Superintendent.

3.4. The superintendentSuperintendent shall provide to each member a written manual governing specificthe procedures for the evaluation and testing of members for promotion or reclassification.

3.5. Basic eligibility requirements for participation in all sub-systems shall include:

3.5.1. Compliance with the physical fitnessability requirements as provided for by section 4 of this rule;

3.5.2. Achievement by the member of a minimum score of 75% on the most recent general knowledge examination;
and

3.5.3. Achievement of eligible status as determined in compliance with sections 5.3 and 5.4 of this rule; and

3.5.4. The member must obtain a rating of success in all applicable areas on the most recently completed employee evaluation.

3.6. The promotional standards officer may establish minimum and/or maximum advance notification limits for the submission of requests for promotional consideration and/or petitions

for reclassification.

3.7. ~~The superintendent shall solicit from Any board, with the exception of evaluation boards within the supervisory field promotional promotions system selection and review board a written review of, established under this rule may through the West Virginia State Police Career Progression System to be completed once every twelve (12) months use of telephone or electronic media make decisions and/or recommendations upon approval by a majority of the board. Such review shall identify specific problems with the system's procedures and shall include recommendations for remedial action.~~

§81-3-4. Physical fitnessability.

4.1. The superintendent ~~Superintendent~~ shall adopt a comprehensive physical fitness ~~physical ability~~ program to establish minimum levels of physical fitness performance ~~ability for department members and declare the program applicable to the career progression system.~~

4.2. ~~A~~ Once the physical ability program is adopted and declared applicable to the career progression system, a member must meet or exceed the minimum levels of physical ability established for and applicable to him ~~him/her~~ in order to be eligible for promotion or reclassification within the career progression system.

4.3. Until a comprehensive physical fitness ~~ability~~ program has been adopted and declared applicable to the career progression system, all members, otherwise eligible, shall be considered to have met the physical fitness ~~ability~~ standards as required by any section of this rule.

§81-3-5. Disciplinary action.

5.1. For purposes of the career progression system only, the following limitations will apply:

5.1.1. Reprimands will be considered only when the reprimand is issued by the superintendent ~~Superintendent~~.

5.1.2. Demotions will be considered ~~as include~~ any reduction in rank or classification within the member's permanent or temporary system that resulted from disciplinary inquiry or investigation.

5.1.3. Suspensions will be considered as any ordered absence from duty that results from a violation of any departmental policy, procedure, or rule of conduct as verified through a division ~~department~~ investigation or inquiry. An ordered absence prior to a division investigation shall only be considered as a valid ~~This also includes any instance where a member exchanges leave days in lieu of actually serving suspension if the investigation sustains the allegation days. An ordered absence prior to a department investigation shall only be considered as a valid suspension if the investigation sustains the allegation.~~

5.1.4. Reprimands or suspensions issued as the result of a department accident, absent some other violation(s) of department rules, policies, or procedures, that would otherwise invoke disciplinary action will not be considered for career progression purposes.

5.2. The superintendent ~~Superintendent~~ shall establish a disciplinary file ~~containing~~ consider disciplinary action applicable under the provisions ~~for the purposes~~ of the career progression system ~~re-classification and promotional eligibility as follows:~~

5.2.1. Such ~~disciplinary file will~~ A reprimand shall be purged by the following schedule:

~~5.2.1 active for career progression system purposes for twelve (12) calendar months from the date of issue; regardless of when the event occurred.~~

~~A reprimand shall be purged upon expiration of twelve (12) calendar months from the date of issue.~~ 5.2.2. A demotion or suspension shall be purged upon expiration of ~~active for career progression system purposes for twenty-four (24) calendar months from the effective date of such demotion or suspension; regardless of when the event occurred.~~

5.3. A valid letter of reprimand shall temporarily eliminate a member's promotional or reclassification eligibility for a period of time as defined by section 5.2.1 of this rule when such reprimand is issued for a violation of the division rules of conduct as identified ~~Active letters of reprimand issued under section 10, 81-CSR 1, except when issued for violations of the following sections of said rule:~~

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

~~5.4 §81-10-1 et seq. A valid demotion for violations of group two or suspension, as identified by this section, three offenses shall temporarily eliminate a member's promotional or reclassification eligibility for a period of time as defined by section 5.2.2 of this rule when such demotion or suspension results from a violation of division rules of conduct as identified under section 10, 81-CSR 1, except when resulting from a violation of the following sections of said rule:~~

~~10.15c
10.15d~~

~~5.5 5.2.1. In all cases, a letter Active letters of reprimand, a demotion or suspension, as identified by this section, will result in the reduction of a member's composite promotional score as defined by section 6.2 of this rule according to the following schedule issued under CSR §81-10-1 10 et seq.~~

~~5.5.1 for violations of group one offenses shall not eliminate a member's promotional or re-classification eligibility.~~

~~Any written reprimand issued as a result of a division motor vehicle accident = one (1) point~~

~~5.5.25.4. All other written reprimands - three (3) points~~

~~5.5.3 Any active demotion or suspension issued under CSR §81-10-1 et seq. Any suspensions shall eliminate a member's promotional or demotion - five (5) points~~

~~5.6 re-classification eligibility for a period of time defined under section 5.2.2.~~

~~5.5. A member's reclassification tenure will include any service period where a disciplinary action has resulted in the temporary elimination of reclassification eligibility.~~

~~5.75.6. Upon the expiration of a temporary the elimination period, a member may request elevation to any classification level for which the member meets the tenure requirement provided the member has occupied each preceding classification level for a minimum period of twelve (12) consecutive calendar months as defined by sections 5.2.1 and 5.2.2, and upon expiration of a mandatory six (6) month waiting period for a reclassification denial, for any reason other than tenure, a member may request elevation to any classification level for which the member meets the tenure requirement provided the member has occupied each preceding classification level for a minimum period of twelve (12) consecutive calendar months.~~

§81-3-6. Permanent rank promotions.

6.1. Eligibility requirements

6.1.1. Participation in the supervisory field promotional system, hereinafter promotional system, promotion system shall be restricted to those members who have achieved and hold the permanent classification or rank of senior trooper, trooper first class, corporal, sergeant, first sergeant or second lieutenant.

~~a Members may request to participate in the promotion system as follows:~~

~~(a) Senior troopers, troopers first class and corporals may request promotion to the rank of sergeant.~~

~~Senior troopers, troopers first class and corporals (b) Sergeants may request promotion to the rank of first sergeant.~~

~~b(c) First sergeants may request promotion to the rank of second or first lieutenant.~~

~~Sergeants (d) Second lieutenants may request promotion to the rank of first sergeant/lieutenant.~~

~~c A request for promotional consideration must be completed and signed by the member.~~

~~First sergeants may request promotion to the rank of second of first lieutenant.~~

~~d. Second lieutenants may request promotion to the rank of first lieutenant.~~

6.1.2. To participate in the promotional system, the member must meet the basic eligibility requirements as required by section 3.5. The promotional standards officer will notify all members of this rule the requisite rank or classification when a promotional cycle has been initiated and will provide to those members forms to request promotional consideration and to establish each candidate's promotional preference.

Additionally, any senior trooper, trooper first class or corporal must obtain a minimum score of .75 on productivity evaluations completed for the twelve (12) month period preceding the initiation of a promotional cycle or must submit a petition of justification if a score of .75 is not achieved or the member is assigned to a support specialist position.

6.1.3. The promotional standards officer will notify all members of the requisite rank or classification when a promotional cycle has been initiated and will provide to those members forms to request promotional consideration.

6.2. Composite score.

6.2.1. Members who participate in the promotional system shall receive a composite score as determined by a competitive:

(a) Promotional examination,

(b) Promotional evaluation process
the member's level of achievement in division

(c) Department tenure and education and the recommendation or,

(d) Education, and

(e) The evaluation by the member's supervisors.

6.2.2. The maximum attainable composite score shall be 99.98100 points with the determination of points made as follows:

(a) Promotional examination -- The member will receive one (1) point for each whole percentile achieved over seventy-five (75%) percent on the written examination.

(b) Promotional evaluation process -- The member may receive up to thirty-five (35) points for his/her performance during the evaluation process.

(c) Longevity -- The member may will receive up to thirty-five (35) points 1/12 point for his performance before the evaluation board each whole month of service from six (6) to twenty (20) years, inclusive.

(d) Education -- The member will receive -- Promotional examination -- The member will receive one (1) 0.75 point for each whole percentile achieved over seventy-five (75%) percent on the written examination, not to exceed 10.

points, for each certified college semester hour or each five (5) cumulative days of successfully completed schools authorized by department special order. -- Supervisory evaluation or recommendation -- Members who hold desiring consideration of college semester hours shall submit certified transcripts to the rank of sergeant, first sergeant or second lieutenant and who serve in supervisory positions will receive 1.5 points for each evaluation point awarded over twenty-two (22) on the supervision section of the member's most recent semi-annual evaluation report personnel director prior to the completion of the promotional cycle. -- Members who hold the rank of senior trooper, trooper first class or corporal will receive The personal director may establish a maximum total of fifteen (15) points cutoff date for the recommendations of first, second and third level supervisor submission of transcripts.

d The certifying institution must be accredited by one of the following accreditation organizations:

- (1) Middle States Association of State Colleges and Schools,
- (2) North Central Association of Colleges and Schools,
- (3) New England Association of Schools and Colleges,
- (4) Northwest Association of Schools and Colleges,
- (5) Southern Association of College and Schools, or
- (6) Western Association of Schools and Colleges.

Longevity -- The member will receive one (1) point for each year of service from six (6) to twenty (20) years (e). Supervisory evaluation -- members who hold the rank of sergeant, inclusive first sergeant or second lieutenant and who serve in supervisory positions as designated by the Superintendent will receive 1.5 points for each evaluation point awarded over twenty-two (22) on the supervision section of the member's most recent employee evaluation.

e Members who hold the rank of senior trooper, trooper first class or corporal will receive a maximum total of fifteen (15) points for the supervisory evaluation of specific departmental supervisory and/or administrative experience.

Education -- The member will receive .075 point, not to exceed 9.98 points, for each certified college semester hour or each five (5) cumulative days of successfully completed schools authorized or sanctioned by division special order.

6.3. Initiation of promotional cycle.

6.3.1. The superintendent Superintendent may initiate a promotional cycle when one or more of the following conditions exist:

a(a) An insufficient number of candidates remain on a current promotion list to fill department vacancies;

~~(b) A number of members, equal to or greater than ten percent (10%) of the number remaining on the current list, reach a tenure or rank (non-probationary status) requirement that would permit their participation in the promotional system; and/or~~

~~(c) The current promotion list has been active for at least twelve (12) calendar months.~~

~~An insufficient number of candidates remain on a current promotional list to fill division vacancies;~~

~~b. A number of members, equal to or greater than ten percent (10%) of the number remaining on the current list, reach a tenure requirement that would permit their participation in the promotional system; and/or~~

~~c. The current promotional list has been active for at least twelve (12) calendar months.~~

6.4. Creation of selection and review board/duties.

6.4.1. The selection and review board is created and shall consist of six (6) voting members, a non-voting recorder and a chairman who shall only vote in cases of tie.

a(a) ~~The board shall meet at the direction of the Superintendent.~~

~~(b) The board shall meet at the direction of the superintendent voting members shall be two (2) members of the non-supervisory rank classification system and one (1) member of each of the supervisory ranks of sergeant, first sergeant and second lieutenant, all of whom shall be drawn by blind lot by the Superintendent from a list of members of the applicable classification or supervisory rank determined by the Superintendent to be eligible to participate in the promotional system and a member of the first lieutenant rank who shall be drawn from a list of all first lieutenants in the department.~~

~~b(c) Each voting member shall have equal voting privileges and all actions of the board shall be by majority decision.~~

~~(d) The voting members board chairman shall be two (2) members of appointed by the non-supervisory rank classification system and one (1) member of each of the supervisory ranks of sergeant, first sergeant and second lieutenant, all of whom shall be drawn by blind lot by the superintendent or a member of Superintendent from the senior staff from a list of members of the applicable classification or supervisory rank determined by the superintendent to be eligible to participate in the promotional system and a member of the first lieutenant rank who shall be drawn from a list of all first lieutenants in the division.~~

~~c(e) A member who is selected for inclusion on this board may not vote on any issue of his/her personal promotion, and any member so affected shall be recused from any deliberations concerning such issue.~~

~~Each voting member shall have equal voting privileges and all actions of the~~(f) ~~The voting members of this board shall be by majority decision~~serve a minimum term of twelve (12) consecutive months unless the member is unable to serve due to illness, injury, promotion, demotion, suspension or other cause.

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

~~The board chairman shall be appointed by the superintendent from the senior staff, and a recorder shall be selected at the direction of the superintendent~~(h) ~~Prior to record assuming the actions~~duties of the board, each member shall be administered the following oath by the Superintendent:

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

~~A member who is selected for inclusion on this board may not vote on any issue of his personal promotion, and any member so affected shall be recused~~(i) ~~The personnel director and a designee from any deliberation~~the professional standards section, or other persons designated by the Superintendent, shall provide to the board, upon request of the board, specific information concerning such issue an individual member's personnel, disciplinary, and employee evaluation records necessary for determining promotional scores or eligibility.

~~f. The voting members of this board shall serve a minimum term of twelve (12) consecutive months unless the member is unable to serve due to illness, injury, promotion, demotion, suspension or other cause.~~

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

~~h. Prior to assuming the duties of the board, each member shall be administered the following oath by the superintendent:~~

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

~~i. The personnel director and the inspector, or those persons designated by the superintendent, shall appear before the board, upon request of the board, for the purpose of providing specific information concerning an individual member's personnel and disciplinary records necessary for determining promotional scores or eligibility.~~

6.4.2. Duties.

~~a(a) The board shall have responsibility for selecting three (3) members of each group of five (5) promotion evaluation board members as provided for by section 6.5.1. The board shall have responsibility for selecting three (3) members of each evaluation board as provided for by section 6.5.1c and d of this rule, reviewing the eligibility of applicants for promotion, determining individual promotional category scores, reviewing all supervisory~~

evaluations of sergeant candidates and determining individual positions of applicants on the rank ordered promotion list.

c and d of this rule, reviewing (b) The board shall communicate with the eligibility of applicants reclassification boards within the career progression system and shall present annually to the Superintendent a review of the career progression system listing identified problems with any suggestions for promotion, determining individual promotional category scores, reviewing applicant petitions of justification, reviewing all supervisory recommendations and non-recommendations and determining individual positions of applicants on the rank ordered promotional list modifications.

b(c) Following the board's evaluation of applicant members' eligibility for supervisory rank promotions, the board will cause to be transmitted to every affected member the results of their individual eligibility and any score awarded for department tenure, education, supervisory evaluation, promotion evaluation process, or promotional examination.

The board shall communicate with the reclassification boards within the career progression system and shall present annually to the superintendent a review of the career progression system listing identified problems with suggestions for corrective action

6.5. Promotion evaluation process.

Following the board's evaluation of applicant members' eligibility for supervisory rank promotions, the board will individually transmit to every affected member the results of their individual eligibility or petition of justification reviews

6.5.1. Such transmittals shall be made following The Superintendent determines the review number of eligibility requirements or petitions of justification with a second transmittal following the completion of the competitive testing procedure evaluators required for the promotion evaluation process.

6.5 The evaluators shall meet at the direction of the selection and review board. - Evaluation boards The evaluators shall individually and independently score each eligible candidate appearing before them.

6.5.1 Each group of five (5) evaluators shall consist of:

(a) Two (2) members appointed by the Superintendent, holding the permanent rank of first lieutenant or the appointed rank of captain or greater.

The superintendent shall determine (b) One (1) member selected by the number of required evaluation boards and such evaluation boards shall meet at the direction of the selection and review board and shall individually and independently score each, equal in rank to the position under consideration and must be eligible candidate appearing before to participate in the board promotion system as determined by the Superintendent.

a(c) One (1) member selected by the selection and review board, recruited from a state police or highway patrol agency from another state, holding a supervisory rank equal to or

~~greater than that under consideration.~~

~~Each evaluation (d) One (1) member selected by the selection and review board and shall consist of five (5) members be recruited from a non-law enforcement profession.~~

~~b Each evaluator shall serve for the duration of the promotion evaluation process. Two (2) members shall be appointed by the superintendent and shall hold the permanent rank The promotional standards officer may assign evaluators to perform specific portions of first lieutenant or the appointed rank of captain or greater the evaluation process individually, or in groups of two or more, in order to facilitate the efficient administration of the promotions process.~~

~~c. One (1) member shall be selected by the selection and review board and shall be equal in rank to the position under consideration and must be eligible to participate in the promotional system as determined by the superintendent.~~

~~d. One (1) member shall be selected by the selection and review board and shall be recruited from a state police or highway patrol agency from another state, and such member shall hold a supervisory rank equal to or greater than that under consideration.~~

~~e. One (1) member shall be selected by the selection and review board and shall be recruited from a non-law enforcement profession.~~

~~f. Each evaluation board shall serve a term as determined by the selection and review board.~~

~~g. No evaluation board member may serve for consecutive promotional cycles for any single rank.~~

6.6. Rank ordered promotional list.

6.6.1. Members participating in the promotional promotion system shall be rank ordered on a promotional list according to the member's composite score as established under section 6.2 of this rule.

6.6.2. The selection and review board will submit to the superintendent Superintendent the rank ordered promotional listing list of members eligible and qualified for supervisory promotion following notification from any supervisory field promotions appellate board as established under section 10 of this rule that any and all appeals have been completed.

6.6.3. Identical composite scores/tiebreakers.

~~a(a) If two (2) or more members requesting consideration for promotion to the rank of sergeant have achieved identical composite scores, the member with the highest non-supervisory rank classification will be ranked highest. If two (2) the members requesting consideration for promotion to the rank of sergeant have achieved identical composite scores are of the same rank classification, the member with the highest length of time in rank classification and then length of time in service will be ranked highest used to establish rank order.~~

~~(b) If both two (2) or more members are of the same classification requesting consideration for promotion to the rank of first sergeant or second lieutenant have achieved identical composite scores, the length of time in classification time in rank and then length of time in service will be used as a tiebreaker to establish rank order.~~

~~b(c) If two (2) or more members requesting consideration for promotion to the rank of first lieutenant have achieved identical composite scores, any second lieutenant shall be ranked ahead of any first sergeant, then time in rank and time in service will be used to establish rank order. If two (2) members requesting consideration for promotion to a position with a designated rank of first sergeant or second lieutenant have achieved identical composite scores, time in rank and then time in service will be used as the tiebreaker.~~

~~c. If two (2) members requesting consideration for promotion to a position with a designated rank of first lieutenant have achieved identical composite scores, any second lieutenant shall be ranked ahead of any first sergeant, then time in rank and time in service will be used as the tiebreaker.~~

6.6.4. Such rank ordered promotional list shall be affirmed as follows:

"The selection and review board, acting under oath and having considered the individual qualifications and accomplishments of all applicants, finds, by majority decision, that the member(s) named on the attached rank ordered promotional list are qualified to assume the duties and responsibilities of eligible for promotional consideration to the rank indicated and recommends said member(s) be considered for promotion to the indicated rank."

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

6.7. Selection for promotion.

6.7.1. In order to be promoted, a member must be available for any assignment anywhere in the State establish through his/her promotional preference that the superintendent determines will be in the best interest of the division he/she is available for the supervisory assignment under consideration.

6.7.2. Promotions within the West Virginia State Police shall only be made by the superintendent Superintendent when positions become a non-support specialist, supervisory field position becomes vacant. When making promotions, the superintendent Superintendent shall select a member from the rank ordered promotional list as certified by the selection and review board and whose final composite score is equal to or higher than the final composite score of the third highest ranking member who is willing and available to accept such promotion as established by the member's written promotional preference (i.6.7.3e. Should a member elect to not accept a promotion when offered, the member shall remain the Superintendent must select on the rank ordered promotional list and will remain eligible for subsequent promotions, subject to the provisions of section 6.7.2 of this rule, without penalty for the duration of the rank ordered promotional list of the top three ranked candidates who have expressed their willingness to accept promotion to the vacancy being considered). When considering multiple field vacancies the order

of promotion shall be at the discretion of the Superintendent.

6.7.3. Members assigned as support specialists may be promoted and at the discretion of the Superintendent either transferred to fill the field vacancy or allowed to remain in the support specialist position and receive the promotion. Through this process multiple promotions may be made when filling a specific vacancy.

6.7.4. Members receiving a promotion based on promotional preference may request a reduction in rank. However, such member will not be returned to the rank ordered list. The member may, at the discretion of the Superintendent, be returned to his/her pre-promotional assignment or to any other position to meet operational need.

6.7.5. Any member selected for and accepting a permanent rank promotion will be required to successfully complete a six (6) month probationary period. This probationary period may be extended at the discretion of the Superintendent. A member who fails to successfully complete the probationary period will be reduced to his/her pre-promotional rank and may be transferred at the discretion of the Superintendent to meet operational needs.

§81-3-7. Non-supervisory rank reclassifications.

7.1. Eligibility requirements.

7.1.1. All members permanently not assigned to the field operations force and who have completed the basic state police entry-level training program shall be eligible for participation in the non-supervisory rank classification system and will be classified as troopers following receipt of forensic laboratory, not holding a field assignments supervisory rank, and who have completed the basic state police entry-level training program and mandatory probationary period shall be eligible for participation in the non-supervisory rank classification system.

7.1.2. To participate in the non-supervisory rank classification system, the member must meet the basic eligibility requirements as required by section 3.5 of this rule.

Additionally, the member must obtain a minimum score of .75 on productivity evaluations completed for the twelve (12) month period preceding reclassification consideration or must submit a petition of justification if a score of .75 is not achieved or the member is assigned to a support specialist position.

7.1.3. A member's eligibility for reclassification will be automatically considered following completion of the following years of cumulative service to the division department, provided the member has not re-enlisted or received a reduction in classification or reclassification denial.

a(a) Senior trooper - three (3) years

(b) Trooper first class - eight (8) years

(c) Corporal - fourteen (14) years

~~7.1.4. Senior trooper - three (3) years~~

~~b~~ A member who has re-enlisted, received a reduction in classification, or has been denied reclassification is required to file a petition for reclassification.

~~Trooper first class - eight (8) years~~

~~c. Corporal - fourteen (14) years~~

~~7.1.4. A member who receives a reduction in classification or reclassification denial is required to file a petition for reclassification.~~

7.1.5. Members who participate within the non-supervisory rank classification system and who meet or exceed the minimum established reclassification and tenure requirements will be reclassified.

7.1.6. A member who does not meet the minimum established reclassification requirements will be required to wait a minimum of six (6) months before filing a petition for reclassification, provided that if reclassification was denied due to tenure, a member may file a petition immediately upon achieving the required tenure.

7.2. Creation of non-supervisory rank reclassification board/duties.

7.2.1. The non-supervisory rank reclassification board is created and shall consist of five (5) voting members and a non-voting recorder.

a(a) ~~The board shall meet at the direction of the Superintendent.~~

~~(b) The board members shall meet at the direction be two (2) members of the superintendent's senior staff as selected by the Superintendent; the personnel director; and two (2) members and two (2) alternates, drawn by blind lot by the Superintendent, with one (1) member and one (1) alternate drawn from the commissioned officer ranks of first lieutenant and second lieutenant and one (1) member and one (1) alternate drawn from the non-commissioned officer ranks of first sergeant and sergeant.~~

~~b~~ Should the personnel director be unavailable to serve or if the position of personnel director should be vacant or eliminated, the Superintendent shall select a member to occupy that board position.

~~The board members~~ (c) Each board member shall have equal voting privileges and all actions of the reclassification board shall be two (2) members of the senior staff as selected by the superintendent; the personnel director; and two (2) members and two (2) alternates, drawn by blind lot by the superintendent, with one (1) member and one (1) alternate drawn from the commissioned ranks of first lieutenant and second lieutenant and one (1) member and one (1) alternate drawn from the non-commissioned officer ranks of first sergeant and sergeant by majority decision.

~~Should the personnel director be unavailable to~~ (d) The most senior highest ranking

~~officer will serve or if the position of personnel director should be vacant or eliminated, the superintendent shall select a member to occupy that board position as the chairman.~~

~~c(e) In instances where a board member drawn from the commissioned or non-commissioned officer ranks is within a candidate's direct supervisory chain, that board member will be recused during the affected candidate's review.~~

~~Each board member shall have equal voting privileges and all actions of the reclassification board (f) The members of the board, except the personnel director who shall be by majority decision a permanent member, shall serve a minimum term of twelve (12) consecutive months unless a member is unable to serve due to illness, injury, promotion, demotion, suspension or other cause.~~

~~d) Nothing in this rule would prohibit a member from serving on consecutive boards.~~

~~(g) The most senior highest ranking officer will serve as chairman, and a recorder/alternate shall be selected at the direction of the superintendent to record the actions of the board.~~

~~e(h) A representative of the professional standards section, or other person designated by the Superintendent, shall provide to the reclassification board specific information concerning individual members' disciplinary records necessary for determining eligibility.~~

~~In instances where a board member drawn from the commissioned or non-commissioned officer ranks is within a candidate's direct supervisory chain, that board member will be recused and replaced administered the following oath by an alternate during the affected candidate's review the Superintendent:~~

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

~~The members of the board, except the personnel director who shall be a permanent member, shall serve a minimum term of twelve (12) consecutive months unless a member is unable to serve due to illness, injury, promotion, demotion, suspension or other cause~~

7.2.2. gDuties.

~~(a) The alternate shall fulfill the terms in all instances where a member cannot fulfill the original term of the reclassification board will verify a member's eligibility in the areas of longevity, employee evaluations, general knowledge examination, physical ability and discipline.~~

~~h(b) The reclassification board will review all petitions for reclassification and will determine eligibility.~~

~~(c) The inspector, or other person designated by the superintendent, shall appear before the reclassification board for the purposes shall cause to be transmitted the results of providing specific information concerning individual members' disciplinary records necessary~~

for determining eligibility and petition reviews to effected members.

i(d) ~~The reclassification board shall have responsibility for identifying deficiencies in the non-supervisory rank classification system and for communicating these deficiencies with any suggestions for modification to the selection and review board of the supervisory field promotional system.~~

Prior to assuming the duties of the reclassification board, each member shall be administered the following oath by the superintendent:

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

7.3. "Reclassification recommendations.

~~7.2:27.3.1. Duties~~ Upon verifying a member's eligibility, the reclassification board will submit to the Superintendent a recommendation for reclassification.

a. ~~The reclassification board will verify a member's eligibility in the areas of longevity, productivity evaluation, general knowledge examination, physical fitness and discipline:~~

b. ~~The reclassification board will review all petitions for reclassification and all petitions of justification and will determine eligibility.~~

c. ~~The reclassification board shall individually transmit to every affected member the results of individual eligibility and petition reviews.~~

d. ~~The reclassification board shall have responsibility for identifying deficiencies in the non-supervisory rank classification system and for communicating these deficiencies with suggestions for remedial action to the selection and review board of the supervisory field promotional system.~~

~~7.3. Reclassification recommendations:~~

~~7.3.1. Upon verifying a member's eligibility, the reclassification board will submit to the superintendent a recommendation for reclassification.~~

7.3.2. Such reclassification recommendation shall be affirmed as follows:

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

7.3.3. Such affirmation shall be filed by the superintendent Superintendent and shall be maintained for a minimum period of one (1) year.

§81-3-8. Criminalist reclassifications.

8.1. Eligibility requirements.

8.1.1. All members permanently assigned to the forensic laboratory shall be eligible for participation in the criminalist classification system, and all such members with less than one (1) year service within the forensic laboratory shall be classified as criminalist I.

8.1.2. To participate in the criminalist classification system the member must meet the basic eligibility requirements as required by section 3.5 of this rule, and the member must receive a valid recommendation for reclassification from each applicable supervisory level as determined by the reclassification board.

~~Additionally, the member must obtain a minimum score of .75 on productivity evaluations completed for the twelve (12) month period preceding reclassification consideration or must submit a petition of justification if a score of .75 is not achieved or the member is assigned to a support specialist position.~~

8.1.3. A member may file a petition for reclassification upon completion of the following years cumulative service within the forensic laboratory. Such service shall be inclusive of the member's basic training.

~~a(a) Criminalist II - one (1)~~

~~(b) Criminalist III - three (3)~~

~~(c) Criminalist IV - five (5)~~

~~(d) Criminalist V - eight (8)~~

~~(e) Criminalist VI - ten (10)~~

~~8.1.4. Criminalist II - one (1)~~

~~b. Criminalist III - three (3)~~

~~c. Criminalist IV - five (5)~~

~~d. Criminalist V - eight (8)~~

~~e. Criminalist VI - ten (10)~~

~~8.1.4. A member who receives a reduction in classification or a reclassification denial is required to refile a petition for reclassification.~~

8.1.5. A member who does not meet the minimum established reclassification requirements will be required to wait a minimum of six (6) months before refiling a petition for reclassification, provided that if reclassification was denied due to tenure, a member may file a petition immediately upon achieving the required tenure.

8.1.6. Members who participate within the criminalist classification system and who meet or exceed the minimum established reclassification and tenure requirements will be reclassified.

8.2. Section heads.

8.2.1. A member may be appointed as section head by the superintendent to assume direct supervisory and administrative responsibility for a specific laboratory section. A member so appointed will receive a temporary criminalist classification designation that is one level above his permanent classification. A temporary criminalist classification as authorized by this section may not exceed criminalist VII.

8.3. Creation of criminalist reclassification board/duties.

8.3.1. The criminalist reclassification board is created and shall consist of five (5) voting members and a non-voting recorder.

a(a) The board shall meet, at the direction of the Superintendent, following submission of a reclassification request by a member of the criminalist system.

(b) The board members shall meet, at the direction of the superintendent, following a reclassification request by a member include the officer in charge of support services, the director of the forensic laboratory and the personnel director as permanent members and two (2) members and two (2) alternates, drawn by blind lot by the Superintendent from all members of the criminalist system who will not become eligible for reclassification during the term of the board.

bShould the director of the forensic laboratory and/or the personnel director be unavailable to serve or if either or both positions should be vacant or eliminated, the Superintendent shall select a member or members to occupy any such vacancies.

The board members shall include the officer in charge of support services, the director of the forensic laboratory and the personnel director as permanent members and two (2) members and two (2) alternates, drawn by blind lot by the superintendent from(c) Each member shall have equal voting privileges and all members actions of the criminalist system who will not become eligible for reclassification during the term of the board board shall be by majority decision.

Should the director(d) The officer in charge of the forensic laboratory and/or the personnel director be unavailable to serve or if either or both positions should be vacant or eliminated, the superintendent support services shall select a member or members to occupy any such vacancies serve as chairman.

~~c(e) In instances where a board member drawn from the criminalist system is within a candidate's direct supervisory chain, that board member will be recused during the affected candidate's review.~~

~~Each member shall have equal voting privileges and all actions of the reclassification~~

~~(f) The members of the board shall be by majority decision, except the officer in charge of support services, the director of the forensic laboratory and the personnel director who shall serve as permanent members, shall serve a term of twelve (12) consecutive months unless the member is unable to serve due to illness, injury, promotion, demotion, suspension or other cause.~~

~~d) Nothing in this rule would prohibit a member from serving on consecutive boards.~~

~~(g) The officer alternate shall fulfill the term in charge of support services shall serve as chairman and instances where a recorder shall be selected at member cannot fulfill the original term of the direction of the superintendent to record the actions of the board.~~

~~e(h) A representative of the professional standards section or other person designated by the Superintendent shall provide to the reclassification board specific information concerning individual members' disciplinary records necessary for determining eligibility.~~

~~In instances where a board member drawn from~~

~~(i) Prior to assuming the criminalist system is within a candidate's direct supervisory chain, that board member will duties of the reclassification board, each member shall be recused and replaced administered the following oath by an alternate during the affected candidate's review the Superintendent:~~

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

~~f. The members of the board, except the officer in charge of support services, the director of the forensic laboratory and the personnel director who shall serve as permanent members, shall serve a term of twelve (12) consecutive months unless the member is unable to serve due to illness, injury, promotion, demotion, suspension or other cause:~~

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

~~h. The inspector or other person designated by the superintendent shall appear before the reclassification board with specific information concerning individual members' disciplinary records necessary for determining eligibility.~~

~~i. Prior to assuming the duties of the reclassification board, each member shall be administered the following oath by the superintendent:~~

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

8.3.2. Duties.

~~(a) The reclassification board will verify a member's eligibility in the areas of criminalist tenure, employee evaluations, general knowledge examination score, physical ability, discipline, and supervisory recommendations.~~

~~(b) The reclassification board will verify a member's eligibility in the areas of criminalist tenure, productivity evaluation, general knowledge examination score, physical fitness, discipline review all petitions for reclassification and supervisory recommendations will determine eligibility.~~

~~b(c) The reclassification board shall individually transmit to every affected member the results of individual eligibility and petition reviews.~~

~~(d) The reclassification board will shall have responsibility for identifying deficiencies in the criminalist classification system and for communicating these deficiencies with any suggestions for modification to the selection and review all petitions for reclassification and all petitions board of justification and will determine eligibility the supervisory field promotional system.~~

~~c. The reclassification board shall individually transmit to every affected member the results of individual eligibility and petition reviews.~~

~~d. The reclassification board shall have responsibility for identifying deficiencies in the criminalist classification system and for communicating these deficiencies with suggestions for remedial action to the selection and review board of the supervisory field promotional system.~~

8.3.3. Reclassification recommendations.

~~a(a) Upon verifying a member's eligibility, the reclassification board will submit to the Superintendent a recommendation for reclassification.~~

~~Upon verifying a member's eligibility, the (b) Such reclassification recommendation shall be affirmed as follows:~~

~~"The reclassification board will submit to the superintendent a recommendation for reclassification, acting under oath and having considered the individual qualifications and accomplishments of the member(s) requesting reclassification, finds, by majority decision, that the member(s) named on the attached recommendation have met or exceeded the minimum eligibility requirements for reclassification to the criminalist classification indicated and recommends said member(s) be reclassified to the indicated criminalist classification"~~

~~(c) Such affirmation shall be filed by the Superintendent and shall be maintained for a minimum period of one (1) year.~~

~~b. Such reclassification recommendation shall be affirmed as follows:~~

~~"The reclassification board, acting under oath and having considered the individual~~

~~qualifications and accomplishments of the member(s) requesting reclassification, finds, by majority decision, that the member(s) named on the attached recommendation have met or exceeded the minimum eligibility requirements for reclassification to the criminalist classification indicated and recommends said member(s) be reclassified to the indicated criminalist classification"~~

~~c. Such affirmation shall be filed by the superintendent and shall be maintained for a minimum period of one (1) year.~~

§81-3-9. Administrative support specialist reclassifications.

9.1. Eligibility requirements.

9.1.1. All members assigned to support specialist positions, shall be eligible for participation in the administrative support specialist classification system, provided such members have successfully completed a one (1) year probationary period within a specific support specialist position.

9.1.2. A member shall not advance within the administrative support specialist classification system to a level that exceeds the maximum classification level established for that position by the Superintendent. This section will not preclude the Superintendent from authorizing a permanent rank promotion of a member assigned to a specific support specialist position.

9.1.3. A member may file a petition for reclassification to the next applicable classification level following each twelve (12) months of continuous service as a support specialist.

9.1.4. A member requesting reclassification must submit a petition for reclassification to the support specialist reclassification board. Such petition shall take such form as required by the superintendent.~~Superintendent.~~

9.1.5. A member requesting reclassification must meet the basic eligibility requirements as required by section 3.5 of this rule.

9.1.6. ~~A member who is denied reclassification or promotional eligibility within the member's permanent career progression system shall not be eligible for reclassification within the administrative support system until such time as the member achieves eligibility within the permanent system support position.~~

~~9.1.7. A member who is denied reclassification or promotional eligibility within the member's permanent career progression system shall not be eligible for reclassification within the administrative support specialist classification system until such time as the member would achieve eligibility status within the permanent system.~~

9.1.8. A member who receives a reduction in classification or reclassification denial is required to refile a petition for reclassification.

~~9.1.8. A member who does not meet the minimum established reclassification requirements will be required to wait a minimum of six (6) months before refile a petition for reclassification, provided that if reclassification was denied due to tenure, a member may file a petition immediately upon achieving the required tenure.~~

~~9.1.9. A member who does not meet the minimum established reclassification requirements will be required to wait a minimum of six (6) months before refile a petition for reclassification, provided that if reclassification was denied due to tenure, a member may file a petition immediately upon achieving the required tenure.~~

~~9.1.10. Members failing to meet the basic eligibility requirements of section 3.5 shall, at the discretion of the Superintendent, lose their support specialist classification designation until such time they meet the basic eligibility requirements.~~

9.2. Creation of administrative support specialist reclassification board/duties.

9.2.1. The administrative support specialist reclassification board is created and shall consist of five (5) voting members and a non-voting recorder.

~~a(a) The board shall meet, at the direction of the Superintendent, following a reclassification request by a member of the administrative support specialist system.~~

~~(b) The board members shall meet, at the direction be three (3) members of the superintendent, following a reclassification request senior staff as selected by a member of the administrative support specialist system the Superintendent, the most senior ranking officer assigned to the training section and the personnel director.~~

~~b(c) Each board member shall have equal voting privileges and all actions of the reclassification board shall be by majority decision.~~

~~(d) The board members shall be three (3) members of the senior staff as selected by the superintendent, the most senior highest ranking officer assigned to the training academy and the personnel director will serve as chairman.~~

~~c(e) The members of the board selected by the Superintendent shall serve a minimum term of twelve (12) consecutive months unless a member is unable to serve due to illness, injury, promotion, demotion, suspension or other cause. Should the personnel director submit~~

~~(f) In all instances where a petition for reclassification or otherwise be unavailable to serve, or if board member cannot fulfill the original term of the position of personnel director should be vacant or eliminated, the superintendent board, the Superintendent shall select appoint a member to occupy that board position of the senior staff or a member of the administrative support specialist classification system to fulfill the term.~~

~~d(g) A representative of the professional standards section, or other person designated by the Superintendent, shall provide to the reclassification board specific information concerning individual member's disciplinary records necessary for determining eligibility.~~

~~Each board member shall have equal voting privileges and all actions(h) Prior to assuming the duties of the reclassification board, each member shall be administered the following oath by majority decision the Superintendent:~~

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

~~The most senior highest ranking officer will serve as chairman, and a recorder shall be selected at the direction of the superintendent to record the actions of the board~~

~~9.2.2.f Duties.~~

~~(a) The members of the reclassification board selected by the superintendent shall serve a minimum term of twelve (12) consecutive months unless a member is unable to serve due to illness will verify a member's eligibility in the areas of support specialist tenure, employee evaluations, general knowledge examination score, physical ability, injury, promotion, demotion, suspension or other caused discipline and supervisory recommendations.~~

~~g(b) The reclassification board will review all petitions for reclassification and will determine eligibility.~~

~~In all instances where a board member cannot fulfill the original term of the board; the superintendent(c) The reclassification board shall appoint a member of cause to be transmitted the senior staff or a member of the administrative support specialist classification system to fulfill the term results of individual eligibility and petition reviews to every effected member.~~

~~h(d) The reclassification board shall have responsibility for identifying deficiencies in the administrative support specialist classification system and for communicating these deficiencies, with suggestions for modification, to the selection and review board of the supervisory field promotional system.~~

~~The inspector, or other person designated by the superintendent, shall appear before the reclassification board for the purpose of providing the board with specific information concerning individual member's disciplinary records necessary for determining eligibility.~~

~~i. Prior to assuming the duties of the reclassification board, each member shall be administered the following oath by the superintendent:~~

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

~~9.2.2: Duties.~~

~~a. The reclassification board will verify a member's eligibility in the areas of support~~

~~specialist tenure, general knowledge examination score, physical fitness, discipline and supervisory recommendations.~~

~~b. The reclassification board will review all petitions for reclassification and will determine eligibility.~~

~~c. The reclassification board shall individually transmit to every affected member the results of individual eligibility and petition reviews.~~

~~d. The reclassification board shall have responsibility for identifying deficiencies in the administrative support specialist classification system and for communicating these deficiencies, with suggestions for remedial action, to the selection and review board of the supervisory field promotional system.~~

9.3. Reclassification recommendations.

9.3.1. Upon verifying a member's eligibility, the reclassification board will submit to the superintendent ~~Superintendent~~ a recommendation for reclassification.

9.3.2. Such reclassification recommendation shall be affirmed as follows:

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

9.3.3. Such affirmation shall be filed by the superintendent ~~Superintendent~~ and shall be maintained for a minimum period of one (1) year.

~~§81-3-10. Career progression appeals:~~

~~10.1. General provisions:~~

~~10.1.1. Members shall have the right to review and appeal any adverse decision concerning their eligibility for promotion or reclassification within any sub-system of the career progression system by appearing before or submitting written argument to the applicable appellate board.~~

~~10.1.2. In instances where a member is denied participation in the supervisory field promotional system or denied reclassification eligibility in any other sub-system due to a deficient productivity evaluation, the member may relinquish his right to appeal and may file a petition of justification.~~

~~10.1.3. Members who participate within any sub-system of the career progression system that requires a written examination shall be permitted to review the examination answer key immediately following the scoring and recording of the examination. Such review shall be conducted by the test administrator or other person designated by the superintendent.~~

~~10.1.4. Members who participate within the supervisory field promotional system shall be notified in writing of their individual numerical values awarded for promotional consideration and shall be entitled to review and appeal any numerical value presented by the selection and review board as representation of the member's individual score for longevity, educational achievement, supervisory evaluation or recommendation, or evaluation board score.~~

~~10.1.5. A member must file a notice of intent to appeal with the applicable appellate board within fifteen (15) days following any decision issued by a selection and review or reclassification board, and the appellate board must render a decision within five (5) days following the review of any appeal. Any such notice must include the member's standing for appeal.~~

~~10.2. Creation of appellate boards/duties.~~

~~10.2.1. Separate and distinct appellate boards shall be created to address member appeals generated within each sub-system of the career progression system.~~

~~a. The supervisory field promotions appellate board and the non-supervisory rank reclassifications appellate board shall each be comprised of five (5) members. Each board shall be drawn by blind lot by the superintendent or a member of the senior staff, with one (1) member being drawn from each of the supervisory ranks of sergeant, first sergeant, second lieutenant and first lieutenant and one (1) member being drawn from the non-supervisory ranks of senior trooper, trooper first class and corporal, with one alternate drawn for each board position, provided that members participating within the criminalist classification system shall not be eligible for selection to this board.~~

~~b. The criminalist reclassifications appellate board shall be comprised of three (3) members and one (1) alternate drawn by blind lot by the superintendent or a member of the senior staff from all members of the criminalist system.~~

~~c. The administrative support specialist reclassifications appellate board shall be comprised of five (5) members and two (2) alternates drawn by blind lot by the superintendent or a member of the senior staff from the administrative support specialist classification system, provided that any member shall be withdrawn from such board and replaced by an alternate, if the member receives a transfer that results in the loss of support specialist designation.~~

~~d. Each board member shall have equal voting privileges and all actions of any board shall be by majority decision.~~

~~e. Each appellate board shall select a member to serve as board chairman and a recorder shall be selected at the direction of the superintendent to record the actions of the board.~~

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

~~g. All members who are responsible for completing or reviewing any recommendation, evaluation, examination or other such issue that directly effects the eligibility~~

for reclassification or promotion of any member submitting an appeal to any appellate board to which he has been selected shall be temporarily recused from the appellate board and replaced by the alternate for any board deliberations or other actions concerning that appeal.

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

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

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

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

10.2.2. Duties:

a. Each appellate board shall review all appeals submitted to it and shall determine the merit of the appeal and will dismiss, as provided for by section 10.3.2.a of this rule; any appeal found to be without standing;

b. The appellate boards will review every appeal found to be meritorious and shall determine the validity of arguments or evidence presented.

c. The board will make a determination as provided for by section 10.3.2.b or 10.3.2.c of this rule as to the correctness of the decision or issue of appeal after weighing the facts presented and will issue a decision to sustain or reverse the original decision or issue.

10.3. Authority of appellate boards/determination to be made:

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

10.3.2. A written determination by the appellate board shall be issued following each review, and such determination shall specify one (1) of three (3) decisions as follows:

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

b. The decision of the selection and review board or reclassification board, as appropriate, has been sustained (in which case, the member's eligibility status or promotional score will remain unchanged); or

c. The decision of the selection and review board or reclassification board, as

appropriate, has been reversed (in which case, the member's eligibility is reinstated or promotional score is changed to reflect the findings of the appellate board).

~~10.3.3. All decisions of the appellate board shall be final and not subject to appeal for judicial review.~~

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

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September 22, 1997

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: West Virginia State Police

RULE: Amendment, Series 3, West Virginia State Police Career Progression

DATE FILED AS AN EMERGENCY RULE: August 11, 1997

DECISION NO. 10-97

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule is **denied**. 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 32 AM '97

FILED

KEN HECHLER
Secretary of State



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**EMERGENCY RULE DECISION
(ERD 10-97)**

AGENCY: West Virginia State Police
RULE: Series 3, Amendments, West Virginia State Police Career Progression

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 §15-2-5(b) reads:

The superintendent is authorized to promulgate legislative rules in accordance with §29A-3-1 et seq. of this code for the purpose of ensuring consistency, predictability and independent review of any system developed under the provisions of this section.

par. 9 It is the determination of the Secretary of State that 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:

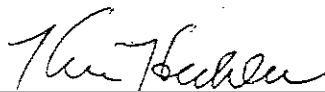
The proposed rule amends a currently existing rule. However, we are proposing filing this rule as an emergency rule. "The West Virginia division of public safety [West Virginia State Police] shall have the mission of statewide enforcement of criminal and traffic laws with emphasis on providing basic enforcement and citizen protection from criminal depredation throughout the state and maintaining the safety of the state's public streets, roads and highways." W. Va Code §15-2-12. In order for the State Police to fulfill this mission it is essential that the agency have an adequate number of filled supervisory positions. These supervisory positions are filled by the use of the "Career Progression System." This system is set out in the WV Code at §15-2-5. Additionally, the above-mentioned code authorizes the creation of legislative rules to carry out the process.

"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, having the responsibility of protecting the public from crime, believes that the public has an interest in the effective operation of the State Police. This effective operation can only be carried with a sufficient number of filled supervisory positions. Therefore, to ensure the most effective operation of

the State Police, the State Police believes that it would be in the public's best interest to file this as an emergency. Granting emergency status to this rule would serve to prevent substantial harm to the public by ensuring that the most up-to-date, formal, effective procedures are in place to promote members of the State Police.

par. 13 It is the determination of the Secretary of State that this proposal does not qualify under the definition of an emergency as defined in §29A-3-15(f).

par. 14 This decision shall be cited as Emergency Rule Decision 10-97 or ERD 10-97 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

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FILED