

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #2

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: Division of Protective Services TITLE NUMBER: 99

RULE TYPE: Legislative CITE AUTHORITY: 15-2D-3

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 5

TITLE OF RULE BEING PROPOSED: Contracted Police or Security Services

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON August 30, 2012 AT 5:00 P.M. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Division of Protective Services

Director Randall K. Mayhew

1900 Kanawha Boulevard East  
Building 1, Room 152-A

Charleston, West Virginia 25305  
304-558-9911

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

M. Austin Y. Morris - WVDMAFS  
Authorized Signature Dep Sec.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

**West Virginia Division of Protective Services  
Title 99  
Series 5**

**Summary of Proposed Rule**

The proposed rule specifies the conditions under which members of the Division of Protective Services are permitted to perform extraordinary police or security services and establishes the procedure to be followed when deploying members for this type of employment.



Rule Title: \_\_\_\_\_

3. **Explanation of above estimates (including long-range effect):**  
Please include any increase or decrease in fees in your estimated total revenues.

None

### MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

The rule is proposed to specify the conditions under which members of the Division of Protective Services are permitted to perform extraordinary police or security services and establishes the procedures to be followed when deploying members for this type of employment.

Date: 07/27/2012

Signature of Agency Head or Authorized Representative

M. Christine J. Morris - WVD MAPS Dep Sec.

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**TITLE 99  
LEGISLATIVE RULE  
WEST VIRGINIA DIVISION OF PROTECTIVE SERVICES**

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**SERIES 5  
CONTRACTED POLICE OR SECURITY SERVICES**

**§99-5-1. General.**

1.1. Scope. -- This rule specifies the conditions under which members of the West Virginia Division of Protective Services may perform extraordinary police or security services and establishes the procedures to be followed.

1.2. Authority. -- W. Va. Code §15-2D-3.

1.3. Filing Date. -- July 27, 2012

1.4. Effective Date. --

**§99-5-2. For the Purposes of This Rule.**

2.1. "Director" means the individual responsible for the control and supervision of the West Virginia Division of Protective Services.

2.2. "Compensatory day off" means that time off duty awarded to a member of the division as compensation for working on a designated state or national holiday" or when a member has exhausted his allowable work hours under the Fair Labor Standards Act.

2.3. "Extraordinary police or security services" means those services determined by the director or his/her designee to be in the public interest performed by a member of the division pursuant to a contractual agreement with a public, quasi public, military, or private entity when the service is not prohibited by law and when the service would not have been otherwise performed by the division.

2.4. "Member" means a non-probationary employee of the division, empowered under the provisions of West Virginia Code §15-2D-3.

2.5. "Officer in Charge of Field Operations" means that member of the division designated by the Director as the principal operational supervisor of field operations.

2.6 "Equipment" means those items utilized by the division that are necessary to provide the extraordinary security and protection duties as required in West Virginia Code §15-2D-3.

**§99-5-3. Application for Contracted Police or Security Services.**

3.1. All requests for contracted police or security services must be made to the Director and shall explain the need for services, funding source, and the authority under which the request is made.

3.2. The Director shall not grant approval for any contractual employment under any circumstances involving labor disputes.

**§99-5-4. Contract Guidelines.**

4.1 The Director shall enter into a contract for all contracted police and security services.

4.2. All contracts shall contain provisions that the contractual employer agrees to hold harmless and indemnify the State of West Virginia, the Division of Protective Services, and its employees and members from any liability arising from the contractual employment.

4.3 The total cost of the services and the number of hours contracted shall not exceed those outlined in the contract unless new terms are subsequently agreed to, in writing, by both parties.

4.4. The Director shall negotiate compensation rates for contracted services on a man-hour basis and may also negotiate compensation for equipment and other additional division expenditures or costs.

4.5. The contractual employer shall pay for services rendered by the division by check, made payable to the West Virginia Division of Protective Services, within five (5) days of receipt of an itemized invoice.

4.6. West Virginia Division of Protective Services personnel shall make all law enforcement decisions encountered by members during contractual employment and the contractual employer shall not dictate or influence the decisions.

4.7. In the event that division members who are assigned to contractual employment are required to return to official duty in response to a public disaster or other emergency, neither the West Virginia Division of Protective Services nor any of its officers or members are liable for any damages incurred as a result of the reassignment.

**§99-5-5. Assignment of Members.**

5.1. The Officer in Charge of Field Operations or his/her designee shall coordinate the manpower recruitment and allocation for all approved requests for contractual services and negotiate minor contract provisions.

5.2. Members accepting contractual employment must be in the following duty status:

(a) Day off duty,

(b) Annual leave,

(c) Compensatory day off,

(d) Holiday off duty, or

(e) Regularly scheduled work day, provided that there is a minimum of eight hours within the twenty-four hour period where the member is neither in an on-duty status nor on contractual-duty status.

5.3. Members may not accept any contractual employment when the accepting of such employment would interfere with the member's ability to perform the primary duties of a Division of Protective Services Officer.

5.4. Members who are placed in the following duty status are not eligible for participation in any contractual employment:

- (a) Basic officer training,
- (b) Post-basic probationary status,
- (c) Active suspension,
- (d) Administrative leave,
- (e) Temporary alternative duty due to a physical or mental condition,
- (f) Sick leave,
- (g) Disability leave, or
- (h) Family leave.

5.5. The Officer in Charge of Field Operations shall ensure that sufficient supervisors are provided to properly supervise division personnel and detail operations.

5.6. The Director shall provide members assigned to contractual employment with division vehicles for transportation to, during and from the location of the employment when necessary. The Officer in Charge of Field Operations may establish mileage limitations and/or assign multiple members to vehicles.

5.7. Members are in an off-duty status while traveling to and from the location of contractual employment unless (1) Specifically instructed otherwise by the Officer In Charge of Field Operations or (2) A serious violation of the law or a life threatening situation is observed.

**§99-5-6. Compensation.**

6.1. The division comptroller shall compute compensation for members on contractual employment at the rate specified by the contract regardless of the member's classification under the Fair Labor Standards Act or the member's normal hourly compensation rate. The comptroller will deduct applicable state and federal taxes from the member's total contractual employment compensation.

6.2. The comptroller will make no deduction of retirement contributions from contractual employment compensation and a member's retirement benefits will not be enhanced by participation in contractual employment. All other division benefits will remain in force during contractual employment.