

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

Form #4

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SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: West Virginia Division of Protective Services TITLE NUMBER: 99

CITE AUTHORITY: W. Va. Code 15-2D-3

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

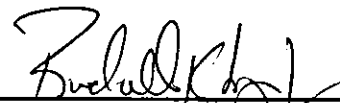
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 5

TITLE OF RULE BEING PROPOSED: _____

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



Authorized Signature

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

**SERIES 5
CONTRACTED POLICE OR SECURITY SERVICES**

§99-5-1. General.

1.1. Scope. -- This rule specifies the conditions under which the West Virginia Division of Protective Services may contract with entities for the performance of extraordinary police or security services and establishes the procedure 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. Definitions for this rule.

2.1. "Compensatory day off" means time 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.

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

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

2.4. "Extraordinary duty" means time that a member of the division spends working on extraordinary police or security services.

2.5. "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 requesting entity when the service is not prohibited by law and when the service would not have been otherwise performed by the division.

2.6. "Member" means a non-probationary employee of the division, empowered under the provisions of W. Va. Code §15-2D-3.

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

2.8. "Requesting entity" means a public, quasi-public, military, or private entity that applies for extraordinary police or security services pursuant to section three of this rule.

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

3.1. Any entity that requests use of the Capitol complex through the West Virginia General Services Division, shall also submit a request for extraordinary police or security services. The West Virginia General Services Division shall inform the entity of the application requirement, explain to the entity how to apply, and inform the entity that the contracted police or security services may include additional costs.

3.2. All requests for extraordinary 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.

3.3. The Director shall review all requests and decide whether approval shall be granted. The Director shall not grant approval for any request involving labor disputes.

§99-5-4. Contract Guidelines.

4.1. If the Director grants approval to a requesting entity, pursuant to section three of this rule, the Director shall enter into a contract specifying all contracted extraordinary police or security services.

4.2. All contracts shall contain provisions that the requesting entity 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 contracted police or security services.

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 extraordinary police or security services on a man-hour basis and may also negotiate compensation for equipment and other additional division expenditures or costs.

4.5. The requesting entity shall pay for the contracted extraordinary police or security services 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 extraordinary police or security services and the requesting entity shall not dictate or influence the decisions.

4.7. In the event that division members who are assigned to extraordinary police or security services 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 extraordinary police or security services and negotiate minor contract provisions.

5.2. Members accepting extraordinary duty must be in one of the following duty statuses:

- (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 extraordinary duty status.

5.3. Members may not accept any extraordinary duty when the acceptance of such duty 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 any of the following duty statuses are not eligible for participation in any extraordinary duty:

- (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 during contracted extraordinary police or security services.

5.6. The Director shall provide members assigned to extraordinary duty with division vehicles for transportation to, during and from the location of the duty, 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 extraordinary duty 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 and benefits.

6.1. The division comptroller shall compute compensation for members on extraordinary duty 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 extraordinary duty compensation.

6.2. The comptroller will make the required deductions of retirement contributions from extraordinary duty compensation. All other division benefits will remain in force during extraordinary duty.