



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

7/19/2018 11:39:22 AM

Office of West Virginia  
Secretary Of State

**NOTICE OF AN EMERGENCY RULE**

AGENCY: Highways TITLE-SERIES: 157-12  
RULE TYPE: Legislative Amendment to Existing Rule: Yes  
RULE NAME: Employment Procedures

CITE STATUTORY AUTHORITY FOR PROMULGATING EMERGENCY RULE:

WVC §17-2A-24

IF THE EMERGENCY RULE WAS PROMULGATED TO COMPLY WITH A TIME LIMIT ESTABLISHED BY CODE OR FEDERAL STATUTE OR REGULATION, CITE THE CODE PROVISION, FEDERAL STATUTE OR REGULATION AND TIME LIMIT ESTABLISHED THEREIN:

N/A

PRIMARY CONTACT:

NAME: Rita A. Pauley  
ADDRESS: 1900 Kanawha Blvd E Bldg 5 R00m 109  
Charleston, WV 25305  
EMAIL: rita.a.pauley@wv.gov  
PHONE NUMBER: 304-558-9337

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

This rule puts into place the overtime policy approved by the State Personnel Board. It is necessary to have the Emergency Rule approved before a flood event, other natural disaster or snow and ice removal become necessary. If the rule is not operational, DOH will not be able to pay its employees for the overtime they have actually worked.

DOES THIS EMERGENCY RULE REPEAL A CURRENT RULE? No

HAS THE SAME OR SIMILAR EMERGENCY RULE PREVIOUSLY BEEN FILED AND OR EXPIRED? No

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

This rule amendment will not impact state revenues.

B. ECONOMIC IMPACT ON THE STATE OR ITS RESIDENTS:

This rule amendment will benefit the DOH employees who are called out to work in excess of their regularly scheduled 40 hour work week. They will be paid for the overtime hours they actually work.

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2018 Increase/Decrease (use "-")	2019 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>		Approx. \$4,000,000	Approx. \$4,000,000
<b>Personal Services</b>		Approx. \$4,000,000	Approx. \$4,000,000
<b>Current Expenses</b>			
<b>Repairs and Alterations</b>			
<b>Assets</b>			
<b>Other</b>			
<b>2. Estimated Total Revenues</b>			

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

There will not be any effect on DOH's budget because DOH has been paying its employees for overtime actually worked regardless of whether the employee used annual or sick leave in the same week. Under current the Division of Personnel rule DOH would not be able to pay classified service employees who work overtime in the same 40 hour work week and also took annual or sick leave. The overtime would be used to credit their annual or sick leave balance. Unfortunately, the good employees lose the annual leave because they have earned more leave than they are allowed to accumulate.

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.**

Yes

**Rita A Pauley--By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

157CSR12

TITLE 157  
LEGISLATIVE RULE  
DIVISION OF HIGHWAYS

SERIES 12  
EMPLOYMENT PROCEDURES

**§157-12-1. General.**

1.1. Scope. -- This rule implements the provisions set forth in W. Va. Code §17-2A-24 regarding special employment procedures for promotions, appointments, and other matters consistent with establishment of a merit based employment process. The Division will follow the Division of Personnel's rule, 143CSR1, for employment related matters not addressed in W.Va. Code §17-2A-24 or this rule.

1.2. Authority. -- W. Va. Code §17-2A-24

1.3. Filing Date. -- ~~April 25, 2018~~

1.4. Effective Date. -- ~~April 13, 2018~~

1.5. Sunset Provision – This rule shall terminate and have no further effect ~~April 13, 2023~~ five years from the effective date.

**§157-12-2. Definitions.**

2.1. "Allocation" means the assignment of a position to a class by the Division of Personnel or the Division of Highways based on the duties performed and responsibilities assigned.

2.2. "Application" means a form used to gather information sufficient to demonstrate that the applicant for employment has the relevant skills, education and experience to perform a job or class of jobs and indicates the applicant's literacy and communication skills. The application may be prescribed by the Division of Personnel or the Division of Highways.

2.3. "Appointment" means the act of hiring an applicant for employment.

2.4. Business Necessity. -- The reason or cause for any of a variety of personnel actions based upon the condition of the division, in whole or in part, or a specific program component which may include, but is not limited to, lack of funds or work; abolishment of positions; material changes in mission, duties or organization; loss of budgeted, allocated or available positions; reinstatement of eligible employees returning from military duty or temporary total disability; reinstatement of an employee in compliance with a legal order; and for recall of employees previously laid off.

2.5. "Class" or "Class of Positions" means one or more positions sufficiently similar in duties, training, experience and responsibilities, as determined by specifications, that the same title, the same qualifications, and the same schedule of compensation and benefits may be equitably applied to each position in the class.

2.6. "Classified Employee" means an employee who occupies a position allocated to a class in the classified service.

2.7. "Classified-Exempt Service" means as established by statute, those positions which satisfy the definitions for "class" and "classify" but which are not covered under the Division of Personnel. or the division's merit system.

2.8. "Classified Service" means those positions which satisfy the definitions for "class" and "classify" and which are covered under the Division of Personnel merit system standards.

2.9. "Classify" means the process of ascertaining, analyzing, and evaluating the duties and responsibilities of positions to determine the number and kind of classes existing in the service and to group the positions in classes.

2.10. "Competitive list" means an official list of currently available eligible applicants for a position or job class listed in the order of the final score as a result of the Division of Highways' examination for the competitive appointment of classified employees.

2.11. "Commissioner" means the Commissioner of the Division of Highways or his or her designee.

2.12. "Day" means an interval of 24 hours as represented by a calendar day, unless otherwise specified.

2.13. "Division" or "DOH" means the Division of Highways.

2.14. "Eligible Applicant or Eligible" means an applicant accepted for a Division of Personnel or Division of Highways examination who meets all minimum requirements and whose name is listed on the register or competitive list established for the class of position.

2.15. "Employee" means a person who lawfully occupies a position in the division and who is paid a wage or salary and who has not severed the employee-employer relationship.

2.16. "Examination" means the process of assessing or measuring and evaluating the relative skills, abilities and fitness of applicants by job-related procedures. Examples include, but are not limited to: application evaluation, written test, performance test, physical agility test, interview or oral assessment, psychological or behavioral assessment, drug screening, and background evaluation.

2.17. "Fitness" means suitability to perform all essential duties of a position by virtue of meeting the established minimum qualifications and being otherwise qualified.

2.18. "Full-time Employee" means any employee who works the full work schedule established for the division.

2.19. "Incumbent" means any employee occupying a position.

2.20. "Lateral Class Change" means the movement of any employee from one class to another class in the same compensation range.

2.21. "Minimum Qualifications" means the least experience, training or a combination of both required by the State Personnel Board or the division for employment in a class of position and admission to an examination for that class of position.

2.22. "Open Competitive Examination" means an examination which permits the competition of all persons who meet the publicly announced minimum requirements for a class of position.

2.23. "Organization" means a hiring unit within the Division of Highways.

2.24. "Original Appointment" means initial employment of an individual into the classified service as a result of selection from a certification of names from a register or competitive list established by open competitive examination or from a preference register.

2.25. "Permanent Employee" means any classified employee who has completed the probationary period prescribed for the job class, or any classified-exempt employee who was hired to fill a position for an unlimited period of time, notwithstanding the division's right to terminate the employee for cause or at his or her will.

2.26. "Posting" means the method of announcing a job vacancy either internally or externally.

2.26.1. An internal posting is a job vacancy announced to all current and former state employees in the classified service through the Division of Personnel posting system.

2.26.2. An external posting is an announcement to the general public through a public service announcement that the Division is accepting applications for an examination.

2.27. "Position" means an authorized and identified group of duties and responsibilities assigned by the division requiring the full-time or part-time employment of at least one person.

2.28. "Position Description" means the document which describes the officially assigned duties, responsibilities, supervisory relationships and other pertinent information relative to a position. This document is the basic source of official information in position allocation. It may be prescribed by either the Division of Personnel or the Division of Highways.

2.29. "Probationary Period" means a specified trial work period designed to test the fitness of an employee for the position for which an original appointment has been made.

2.30. "Promotion" means a change in the status of an employee from a position in one class to a vacant position in another class of higher rank as measured by salary range and increased level of duties, responsibilities or both.

2.31. "Provisional Appointment" means the hiring of an employee to fill a position pending the administration of an open competitive examination and establishment of a register or competitive list.

2.32. "Reallocation" means reassignment of a position by the commissioner from one class to a different class on the basis of a change in the kind or level of duties or a combination of both, assigned to the position or to address a misalignment of title and duties.

2.33. "Recall" means the re-employment from a recall list of a former permanent classified employee separated due to layoff.

2.34. "Reclassification" means the revision by the State Personnel Board of the specifications of a class or class series which results in a redefinition of the nature of the work performed and a reassignment of positions based on the new definition and may include a change in the title, compensation range, or minimum qualifications for the classes involved.

2.35. "Register" means an official list of currently available eligible applicants for a position or job class listed in the order of the final score as a result of the Division of Personnel examination for the

competitive appointment or in tenure order for preference hiring of laid off permanent classified employees.

2.36. "Separation" means separation from employment that may be either voluntary or involuntary.

2.37. "Temporary Employment" means employment exempt from the classified service for a period not to exceed 1,000 work hours per twelve-month period.

2.38. "Terminal annual leave" means the balance of an employee's accrued and unused annual leave as of that employee's last day of work.

2.39. "Vacancy" means an unfilled or soon to be vacated budgeted position in the classified service.

2.40. "Veteran" means any person who meets the requirements set forth in W. Va. Code § 6-13-1.

**§157-12-3. General Requirements.**

3.1. The commissioner may, in his or her sole discretion, continue to request competitive registers of eligible applicants from the Division of Personnel which shall provide the competitive registers within five business days of receipt of the commissioner's request.

3.2. The commissioner may elect in his or her sole discretion to post a position internally, externally or both. A position to be filled internally, with a candidate whether by transfer or reinstatement, shall be posted for at least seven calendar days before the Commissioner may select an applicant. For a position to be filled externally, requiring a public service announcement, the announcement shall be posted for not less than fourteen calendar days.

3.3. Postings shall be active for up to one year. If a posted vacancy is not filled within in one year of the established closing date, the commissioner will repost the vacancy prior to appointment to the vacant position.

3.4. The commissioner may employ any person listed on the Transportation Worker I register for employment as a Transportation Worker I without regard to the applicant's position on the register or competitive list.

3.5. The commissioner shall evaluate applicants for employment or promotion within the division for positions within the classified service and classified-exempt service. The commissioner has sole authority to determine whether applicants for positions with the division meet minimum position requirements, including whether or not a promotional examination is required.

3.6. The commissioner shall make classification determinations for positions within the division by using the classification system approved by the State Personnel Board. The commissioner may, however, independently submit to the State Personnel Board recommendations for the approval of new division classifications or the amendment of current division classifications.

3.7. The commissioner shall exercise his or her sole discretion regarding the application of the Division of Personnel's system of compensation for positions in the division within the classified and classified-exempt service.

3.8. The commissioner may independently submit to the State Personnel Board recommendations for the approval of a special pay scale for some or all of the division's personnel.

3.9. The commissioner has sole authority regarding settlement terms and conditions in employee grievances, disputes, or other legal proceedings, subject to compliance with requirements of state and federal law, rule, or regulation.

3.10. In accordance with the provisions of W.Va. Code §17-2A-24, the commissioner may request, and the Division of Personnel shall facilitate or perform, any lawful action necessary to initiate or complete the division's employment transactions, including, but not limited to, posting positions on applicable systems, initiating public service announcements when requested by the division, and processing necessary forms.

3.11. The commissioner shall comply with all applicable record retention requirements provided by law.

3.12. The commissioner may declare any positions effectively vacant due to employee separations, which were not processed prior to the division being placed under the wvOASIS system, and subject to being filled.

3.13. The commissioner may utilize all vacant position numbers when posting to fill a vacancy and may post vacant positions utilizing multiple classifications with corresponding job descriptions when the commissioner determines it to be necessary and in the best interest of the division.

3.14. A vacancy created when an employee of the division separates employment or goes on terminal annual leave may be posted and filled immediately upon receipt of the notice that the employee has separated from employment or commenced such leave.

**157-12-4. Exemption from regular application and appointment requirements.**

4.1.1. Pursuant to the special procedure authorized by W. Va. Code §17-2A-24, the division is not required to comply with Division of Personnel procedures for seeking applications and making appointments to classified service positions.

4.1.2. The commissioner shall comply with West Virginia and federal law prohibiting nepotism, favoritism, discrimination or unethical practices related to employment and promotion, and the public employee grievance system; and

4.1.3. The special hiring and retention processes developed by the commissioner may not impact the division's eligibility for any federal highway funds or assistance.

4.1.4. Classified employees of the division shall continue to be covered by the civil service system and may utilize any applicable public employee grievance process.

**§157-12-5. Applications and Examinations.**

5.1. The commissioner may establish an examination procedure, continue to utilize the services of the Division of Personnel, or utilize a combination of both for appointments to positions in the classified service. Any examination procedure so established shall be conducted on an open competitive basis. Any such procedure is intended to reveal the capacity of the applicant to perform the duties of the position or job class for which he or she is competing. The following provisions of this section apply if the division establishes its own examination procedures.

5.2. Any examinations established by the commissioner shall, to the extent possible, be developed on the basis of objective analysis of the job and consultation with appropriate job experts and may include:

written tests, performance tests, ratings of training and experience, or other assessment procedures related to the content of the job duties and job performance and will be administered without prejudice to all applicants in consideration for the position; and scoring and weighting procedures shall be consistently applied and based on objective job criteria.

5.3. When administering a division established examination procedure, the commissioner shall provide a public service announcement of open competitive examinations the division plans to administer at least fourteen (14) days in advance of the closing date for receipt of applications. Public service announcements may be restricted to the geographic locations where eligible applicants are needed. Public announcement of examinations shall specify the title and compensation range of the class of position, the duties to be performed, the minimum qualifications required, the final date on which applications will be accepted, and all other conditions of competition. The announcement shall also include any special minimum or substitute position qualification standards which will be used in evaluating applicants. The commissioner shall develop all announced qualifications for examination on the basis of information contained in class specifications, job descriptions, job analysis information or a combination thereof.

#### 5.4. Filing Applications.

5.4.1. All applications shall be made on forms prescribed by the commissioner or the Division of Personnel and must be filed with the division or postmarked on or prior to the closing date specified in the announcement. The applications shall be completed in full and may require the inclusion of documents verifying pertinent education, training, licensure, eligibility for veterans' preference, or any other information which the commissioner may consider necessary. All applications shall be signed or affirmed by the applicant. The commissioner may require electronic completion and submission of applications. Electronic applications shall require the applicant's agreed affirmation prior to submission in place of applicant signature. For electronic applications, applicant affirmation agreement and the application submission shall be equivalent to affirmation and signature. The commissioner may verify any information provided on or with an application.

5.4.2. The commissioner may provide for continuous receipt of applications and for conducting examinations as needed.

#### 5.5. Disqualification of Applicants.

5.5.1. The commissioner, in his or her sole discretion, may temporarily or permanently prohibit the reinstatement, appointment, temporary employment, promotion, reallocation, demotion, lateral class change, temporary upgrade, transfer, or examination of an applicant, or after examination, may disqualify the applicant or remove his or her name from a list or certification, or refuse to certify any eligible on a list if sufficient evidence reveals that:

5.5.1.a. he or she is found to lack any of the requirements established for the position or class;

5.5.1.b. he or she has been convicted of a crime which has a reasonable connection to the classification for which he or she is applying;

5.5.1.c. he or she has made a false statement or omission of material fact or has misrepresented his or her qualifications in his or her application;

5.5.1.d. he or she has previously been dismissed, or resigned in lieu of dismissal, from any public service for delinquency, misconduct, or other similar cause;

5.5.1.e. he or she has used or attempted to use political pressure or bribery to secure an advantage in the examination or appointment;

5.5.1.f. he or she has directly or indirectly obtained information regarding examinations to which he or she was not entitled;

5.5.1.g. he or she has failed to submit his or her application correctly or within the prescribed time limits;

5.5.1.h. he or she has taken part in the compilation, administration, or correction of the examination;

5.5.1.i. he or she has taken the same exact examination within the prescribed re-test waiting period;

5.5.1.j. he or she is not eligible to work in the United States;

5.5.1.k. he or she fails to comply with any other reasonable requirements established by the commissioner for the position;

5.5.1.l. if employed in the classification or position applied for, the applicant is a significant risk to the safety or security of information or persons;

5.5.1.m. he or she has otherwise violated provisions of this rule; or

5.5.1.n. the applicant may be disqualified under applicable law.

5.5.2. The Division of Personnel shall notify the commissioner of every person it has disqualified for state employment to assure that disqualified persons are not inadvertently appointed to division employment.

5.5.3. Applicants disqualified by the commissioner shall be notified of their disqualification. The commissioner shall also notify the Division of disqualifications.

5.5.4. Any applicant whose application for a Division of Highways examination has been rejected may request that the commissioner reconsider his or her qualifications. The commissioner shall consider the request if it is submitted in writing and received not later than 15 days following the date the rejection notice was sent. Within thirty (30) days after a properly submitted request for reconsideration is received, the commissioner shall report his or her decision in writing to the applicant. The commissioner shall determine that uniform rating or review procedures have been applied. A rating in any part of an examination shall not be changed unless the commissioner finds that an error has been made. Any correction resulting from the reconsideration shall not affect a certification or appointment that has already been made from a list.

## 5.6. Conduct of Examinations.

5.6.1. If written or other performance examinations are administered by the commissioner, they shall be conducted, to the extent possible, in as many places as are practicable for proper administration. The commissioner may have a continuous recruitment program as provided for in this rule. The

commissioner may designate monitors as necessary to conduct examinations under instructions prescribed by him or her.

5.6.2. Applicants taking competitive examinations shall present personal identification which includes a signature and photograph prior to admission to an examination. Applicants without proper identification shall not be admitted to examinations.

### **5.7. Scoring Examinations.**

5.7.1. The commissioner shall determine a final score for each applicant's Division of Highways established examination. Failure in any part of an examination may disqualify the applicant in the entire examination and may disqualify him or her from participation in subsequent parts of the examination. All applicants for the same position shall be accorded uniform and equal treatment in all phases of the examination procedures.

5.7.2. Any veteran, as defined in Section 2 of this rule, who claims veterans' preference and who has made a passing grade in an open competitive examination shall have five (5) points added to his or her final earned score. An additional five (5) points shall be added to the augmented earned score of any veteran with a compensable service connected disability or who has been awarded the Purple Heart.

5.7.2.a. Any person claiming veterans' preference or service connected disability preference shall submit satisfactory proof of his or her service or disability to the commissioner. Veterans' preference points are not added to final passing scores on promotional examinations, if such exams are required.

5.7.2.b. To receive veterans' preference points, separation from active duty must have been under honorable conditions. This includes honorable and general discharges. A clemency discharge does not meet the requirement of this subsection. Active duty for training in the military reserve and national guard programs is not considered active duty for purposes of veteran preference.

5.7.3. The commissioner shall utilize appropriate professional standards, techniques and procedures in rating the results of examinations and in determining the final scores of competitors.

5.8. If evaluation of training and experience form a part of the total examination, the commissioner shall determine a procedure for the evaluation of the training and experience qualifications of the various applicants. The procedure and standards used in the evaluation shall be job-related and consistently applied to all applicants.

5.9. Each applicant passing all parts of the examination shall be notified of his or her final score as soon as practical after the scoring of the examination has been completed and the competitive list established. The commissioner shall notify an applicant who fails any part of the examination or the total examination.

5.10. The commissioner may modify examination procedures to afford reasonable accommodation to otherwise qualified disabled applicants. The modifications may include changes in the existing testing procedures or the use of specific evaluations of the applicants' observable job skills, the applicants' record of past performance, experience and training or a combination thereof.

5.11. If, within thirty (30) days after receipt of his or her score notice, an applicant notifies the commissioner of a manifest error in the scoring of an examination or other evaluation of the applicant's qualifications, the commissioner shall, after verification of the error, promptly correct that error. The

commissioner shall send formal written notice of the correction to the applicant. These corrections of errors shall not invalidate any certifications or appointments made prior to corrections of the errors.

5.12. The commissioner is responsible for the maintenance of all records pertinent to the examination program in accordance with official retention schedules and shall hold the records in confidence as specified in W. Va. Code §29B-1-1 *et seq.* and §5A-8-21 and §5A-8-22.

**§157-12-6. Applicant lists and registers.**

6.1. Establishment of competitive lists; use of registers.

6.1.1. After each examination created and administered by the division, the commissioner shall prepare a competitive list of persons with passing grades. The names of these persons shall be placed on the competitive list in the order of their final ratings starting with the highest.

6.1.2. After the layoff of permanent classified employees, the Division of Personnel prepares preference registers of qualified permanent classified employees who have been laid off. The commissioner shall request preference registers from the Division of Personnel for each vacant position to be filled by an outside candidate.

6.1.3. The Division of Personnel maintains competitive registers of eligible applicants for state employment. The commissioner may request and select applicants from competitive registers until such time as the commissioner has sufficient qualified applicants on the division's competitive list.

**§157-12-7. Certification of Eligibles.**

7.1. Certification Methods.

7.1.1. The commissioner shall request the appropriate preference register from the Division of Personnel for each vacant classified position to be filled by applicants outside the division. If there are no available qualified eligibles on the appropriate preference register, the commissioner may request a register. If the commissioner has established an examination procedure, the commissioner shall certify and submit to the organization seeking to fill a vacancy the names of persons meeting the minimum qualifications for the classification.

7.1.2. If the competitive list established as a result of the division's examination for a specific classification is exhausted, the commissioner may certify names from the lists that most closely meet the qualifications for the position.

7.1.3. Appointments may be made from a certified competitive list anytime within one year of the date of the certification, or such other timeframe determined by the commissioner to be adequate for the needs of the division.

7.1.4. If, in the exercise of its choice provided in this rule, the hiring organization, for good cause shown, passes over the name of an eligible applicant on a competitive list in connection with two (2) separate appointments it has made from the register competitive list, written request may be made to the commissioner that the name of the eligible be omitted from any subsequent list for the same position for a period of no less than one (1) year from the date of the request. If, after that one (1) year period, the eligible applicant is again certified for the same position, and passed over in connection with an appointment, the hiring organization may again request that the name of the eligible be omitted from any subsequent certification as stated in this subdivision.

7.1.5. An eligible applicant may be considered not available by the commissioner if he or she fails to reply to electronic communication [i.e., telephone or electronic mail] or a written inquiry by mail after five (5) business days to his or her last-known address.

7.1.6. If a specific position requires special qualifications that are not common to all positions in that class, the commissioner may limit, or require the Division of Personnel to limit, certification to candidates possessing those qualifications. Eligible applicants will be given adequate opportunity for special qualification consideration. The specific criteria for the restriction of certification shall be based on the duties of the position as verified by job analysis or by an official position description and written justification.

7.1.7. The commissioner may limit certification to candidates available to work at the location of the job. The commissioner may further limit certification geographically when the duties of the position require rapid response to unscheduled emergencies during off duty hours. The commissioner shall establish the boundaries of the acceptable geographic areas based on the specific location and demands of the job. The commissioner shall consider candidates living outside the boundary if they are willing to relocate to the area.

7.1.8. Except for preference certifications made by the Division of Personnel, the commissioner may determine, for certain unskilled or semiskilled job classes for which no previous education, training, or experience is required, that eligibles may be selected for certification by lot. In those cases, all eligibles shall have equal opportunity for certification. No rank order shall be established for the competitive list. Selection for certification by lot will be determined as vacancy requests are received. Once the certification has been made for a particular vacancy, a new certification shall not be issued for the same class and location for sixty (60) days.

## 7.2. Corrections of Errors.

7.2.1. In the event that a name is certified in error and the error is discovered before a personnel transaction has been finalized and one of the named applicants is notified that he or she is appointed, the commissioner shall withdraw the erroneous certification and make a correct certification. If a certification is to fill more than one position, the commissioner shall withdraw only that portion of it pertaining to positions for which personnel transactions have not been finalized and applicants have not been notified that they are appointed. Organizations shall only make conditional offers of employment to applicants until such time the personnel transaction to appoint has received all necessary approvals.

7.2.2. In the event a name is certified in error and the error is discovered after one of the named applicants is notified that he or she is appointed and the applicant is not disqualified for any of the reasons provided in this rule other than not meeting minimum qualifications, and the commissioner would not disapprove the appointment for other lawful reasons, the commissioner shall approve the appointment.

## **§157-12-8. Appointments.**

### 8.1. Original Appointments.

8.1.1. The commissioner shall, for each position, select first from the eligibles on the preference register. Upon exhaustion of the preference register, the commissioner may select from the competitive list or may request a register from the Division of Personnel. The commissioner shall select from the top ten (10) names on the competitive list or register, including any persons scoring the same as the tenth name, or any persons scoring at or above the ninetieth percentile on the open competitive examination.

The commissioner may exclude the names of those eligibles who failed to answer or who declined appointment or of those eligibles to whom the hiring organization offers an objection in writing and the objection is sustained by the commissioner.

8.1.2. In selecting persons from among those certified, the hiring organization shall give due consideration, based on job related criteria, to all available eligibles and may examine their applications and reports of investigations and may interview them. Final selection shall be reported in writing by the organization to the commissioner and shall include a statement by the hiring organization certifying that the person charged with making the selection, complied with the requirements of this section; did not make the selection based on favoritism shown or patronage granted; and, considered all available eligibles for the position.

8.1.3. If the eligible selected declines the appointment, the hiring organization shall transmit evidence of declination to the commissioner for the permanent record. The commissioner may consider an eligible as having declined appointment if the eligible fails to reply to electronic communication [i.e., telephone or electronic mail] or a written inquiry by mail after five days. If an eligible accepts an appointment but fails to report for duty at the time and place specified, without giving reasons for the delay satisfactory to the hiring organization and the commissioner, he or she shall be considered to have declined the appointment.

## 8.2. Provisional Appointments.

8.2.1. If there are urgent reasons for filling a classified position and there is no appropriate preference register and there are fewer than three (3) available eligibles on the register or competitive list established as a result of an examination for the position, and no other appropriate list exists, the hiring organization may submit to the commissioner the name of a person to fill the position pending examination and establishment of a register or competitive list. If that person's qualifications have been certified by the commissioner as meeting the minimum qualifications as to training and experience for the position, that person may be provisionally appointed to fill the existing vacancy until an appropriate register or competitive list is established and appointment made from the register or list. No provisional appointment shall be continued for more than six (6) months from the date of appointment, nor shall successive provisional appointments of the same person be permitted, nor shall a position be filled by repeated provisional appointments.

8.2.2. Time spent on a leave of absence without pay shall not extend the period of a provisional appointment.

## 8.3. Temporary Employment.

8.3.1. Hiring organizations may employ individuals for a limited period of time not to exceed 1,000 hours in any twelve-month period in accordance with the provisions of this rule and W. Va. Code S 29-6-1 *et seq.* Individuals employed under the provisions of this subsection are exempt from the classified service. Provided, temporary employees may be retained in a temporary appointment status while receiving workers' compensation temporary total disability benefits as a result of a personal injury or illness received in the course of and resulting from employment with the division. If 1000 hours of work time and temporary total disability has elapsed before the employee reaches Maximum Medical Improvement, his or her temporary employment will be terminated.

## 8.4. Posting of Job Openings.

8.4.1. Whenever a job opening occurs in the classified service, the division shall post a notice within the building, facility or work area and throughout the division that candidates will be considered to fill the job opening. Posting's will also be submitted to the Division of Personnel to be posted so eligible candidates outside of the division may apply. Posting of job openings using the Division of Personnel's or the Division of Highway's electronic or other communications media shall satisfy the requirement to post a notice provided that the division makes regular and convenient access to the media used available to each classified employee in the division, or otherwise provides notice to each classified employee in the division. The notice shall be posted for at least seven (7) calendar days before making an appointment to fill the job opening. The notice shall state that a job opening has occurred, describe the duties to be performed, and the class to be used to fill the job opening.

8.4.1.a. The term job opening refers to any vacancy to be filled by original appointment, promotion, demotion without prejudice, lateral class change, reinstatement, or transfer.

8.4.1.b. The posting notice shall include a description of the duties to be performed by the person selected, the minimum qualifications for the position, the job class to be used in filling the job opening, the salary level or range that will be considered, the full-time equivalent for the position, and the job location.

8.4.1.c. An established closing date shall allow sufficient time to ensure that the job vacancy circulation has been posted throughout the agency for a minimum of seven (7) calendar days. The naming of an individual to fill the position is the appointment and is not altered by the fact that the individual will not assume the duties until a later date. Therefore, the commissioner shall not make an appointment to a position prior to the closing date as listed on the posting. The commissioner may accept applications after the closing date; however, all applications received or postmarked on or prior to any established cut-off date must be accepted and considered.

8.4.1.d. The commissioner shall give due consideration to those employees who apply and are eligible for the posted vacancy.

8.4.1.e. If a posted vacancy is not filled within one year of the established closing date, the organization must re-post the vacancy prior to an appointment to the vacant position.

8.4.1.f. The vacancy posting requirements in this subdivision shall apply to all classified position vacancies except vacancies filled as a result of employees exercising bumping or recall rights, demotions with prejudice or disciplinary transfers for cause.

8.4.1.g. If an individual selected for a posted vacancy refuses the offer of employment, fails to report to work, or resigns or otherwise separates from employment within the first ten (10) work days of employment, the commissioner is not required to repost the vacancy prior to making another appointment to the position. Provided that the date and time of separation occurs within the first ten (10) work days and the appointment is made within thirty (30) calendar days of the separation and the appointment is made from the pool of eligible applicants from which the first employee was hired. This time period supersedes the one year limitation specified in this subsection.

#### **§157-12-9. Promotions, Demotions, Transfers and Reallocations.**

##### **9.1. Method of Making Promotions.**

9.1.1. In filling vacancies, the commissioner shall make an effort to achieve a balance between promotion from within the division classified service and the appointment of qualified new employees. The commissioner may fill a vacancy by promotion, after consideration of the eligible permanent

employees in the division or in the classified service based on demonstrated capacity and quality and length of service, whenever practical and in the best interest of the division.

9.1.2. The organization may only consider a candidate for promotion if he or she possesses the qualifications for the position as set forth in the specifications for the classification for which he or she is a candidate, and may require the candidate to qualify for the new position by a promotional competitive or non-competitive examination administered by the commissioner.

## 9.2. Demotions.

9.2.1. The commissioner may demote an employee with or without prejudice and may demote a probationary employee as provided for in this rule. The organization for whom the employee works shall file the reasons for the demotion and the employee's reply, if any, with the commissioner. Prior to the effective date of the demotion, the organization head or his or her designee shall:

9.2.1.a. meet with the employee in a predetermination conference and advise the employee of the contemplated demotion, provided that the conference is not required when the demotion is requested by the employee, voluntarily and without duress, such as to accept a posted position for which the employee has applied;

9.2.1.b. give the employee oral notice confirmed in writing within three (3) working days, or written notice of the specific reason or reasons for the demotion; and,

9.2.1.c. give the employee a minimum of fifteen (15) days' advance notice of the demotion to allow the employee a reasonable time to reply to the demotion in writing, or upon request to appear personally and reply to the division or section head or his or her designee. Provided, that 15 days' notice is not required when the demotion is requested by the employee, voluntarily and without duress, such as to accept a posted position for which the employee has applied.

## 9.3. Transfers.

9.3.1. The commissioner may move a permanent employee from a position in one class to a vacant position in another class in the same compensation range if the employee is found by the commissioner to qualify for the vacant position.

9.3.2. Subject to the posting requirements provided in this rule, the commissioner may transfer a permanent employee from a position in one organizational subdivision to a position in another organizational subdivision.

9.3.3. The commissioner may transfer a position, its duties, and its incumbent from one organizational subdivision to another at any time.

## 9.4. Position Reallocation.

9.4.1. Whenever changes occur in the duties and responsibilities permanently assigned to a position, the commissioner shall reallocate the position and its incumbent to the proper class. The employee or the organization may seek a reconsideration of the decision by submitting a written request to the commissioner within fifteen (15) working days of the notification of the decision.

9.4.2. The commissioner shall not reallocate a position based on temporary changes in the duties and responsibilities assigned to the position.

9.4.3. When a position is reallocated to a different class, the incumbent shall not be considered eligible to continue in the position unless he or she meets the minimum qualifications for the classification. If ineligible to continue in the position, he or she may be transferred, promoted, or demoted

by the commissioner in accordance with the provision of this rule as the commissioner may determine to be applicable. In any case in which the incumbent is ineligible to continue in the position, and he or she is not transferred, promoted or demoted, the provisions of §143CSR1 regarding resignation, separation suspension, and reinstatement apply.

9.4.4. Reallocations are not subject to job posting requirements.

9.4.5. The commissioner may temporarily upgrade the classification of an employee temporarily performing the duties of a position in a higher compensation range due to a separation or an extended leave of absence, for a short-term project, or in an emergency situation.

**§157-12-10. Reconsideration.**

Any applicant or employee may request that the commissioner reconsider a decision which directly affects the applicant or employee. Unless otherwise specified in this rule, the request must be submitted in writing within 15 days of the applicant's or employee's notification of the decision. Within thirty (30) days of receipt of the applicant's or employee's request for reconsideration, the ~~Director~~ commissioner shall notify the applicant or employee of his or her decision.

**§157-12-11. Grievance Procedure.**

An employee hired for permanent employment may file a grievance with the Public Employees Grievance Board as provided for in W.Va. Code § 6C-2-1 *et seq.*

**§157-12-12. Hours of pay when called to duty after completion of normal work schedule.**

Employees in both the Salaried and Hourly Classified Services will be paid for hours of actual work performed that occur after the accumulation of 40 hours for the work week, notwithstanding the fact that annual or sick leave may have been attributed to reaching the 40-hour threshold, provided the employee occupies a position that is customarily paid either premium or straight-time for overtime hours worked.