



WEST VIRGINIA SECRETARY OF STATE

KRIS WARNER

ADMINISTRATIVE LAW DIVISION

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6/30/2026 1:35:03 PM

Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Personnel TITLE-SERIES: 143-06
RULE TYPE: Procedural Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: SERIES 6 APPEAL OF ADVERSE SUITABILITY
DETERMINATION
CITE STATUTORY AUTHORITY: §29-6-10

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 07/30/2026 5:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Division of Personnel Attn: Employee Relations
ADDRESS: WV State Capitol Complex Building 3, Suite 500
1900 Kanawha Blvd, E. Charleston WV 25305
EMAIL: dopemprelations@wv.gov

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

143CSR6 implements the provisions set forth in the West Virginia Division of Personnel Pre-employment Reference and Inquiries Rule (143CSR4) pertaining to appeal of adverse suitability determinations based on pre-employment background checks.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

The existing Rule is being amended to clarify certain sections of the Rule, to improve internal consistency of the Rule, and to address statutory revisions with the passing of HB5441 amending 29-6-1 et seq.

The civil service reform is designed to facilitate a more streamlined, efficient, and accountable state government in which state employees are held to high standards, merit can be meaningfully rewarded, and the state is better positioned to compete with the private sector for talent. Effective July 1, 2025, and July 1, 2026, most newly hired employees, as well as current employees who voluntarily transfer or accept new positions, enter employment in positions in the classified exempt service that are statutorily excluded from the DOP merit system (formerly Civil Service).

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

It is anticipated these amendments and civil service reform will result in efficiencies that will have a positive impact on the cost and revenues of State government.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

It is anticipated these amendments and civil service reform will result in efficiencies that will have a positive impact on the cost and revenues of State government.

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

It is anticipated these amendments and civil service reform will result in efficiencies that will have a positive impact on State operations which, in turn, benefit state residents through cost saving and provision of services.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2026 Increase/Decrease (use "-")	2027 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

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

Though it is anticipated these amendments and civil service reform will result in efficiencies that will have a positive impact on the cost and revenues of State government, the exact fiscal impact is incalculable at this time.

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

Yes

Joe F Thomas -- 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.

**TITLE 143
PROCEDURAL RULE
WEST VIRGINIA DIVISION OF PERSONNEL**

**SERIES 6
APPEAL OF ADVERSE SUITABILITY DETERMINATION**

§143-6-1. General.

1.1. Scope. -- This rule implements the provisions set forth in the West Virginia Division of Personnel Pre-employment Reference and Inquiries Rule (143CSR4). The information contained in this procedural rule should not be construed to ~~supercede~~ supersede any State or federal law or administrative rule. In the event of any inconsistencies between the procedural rule and such law and/or regulation, the statutory and/or administrative rule provisions shall prevail.

1.2. Authority. -- This rule is issued under authority of W. Va. Code § 29-6-10.

1.3. Filing Date. -- ~~October 23, 2006.~~

1.4. Effective Date. -- ~~November 23, 2006.~~

§143-6-2. Definitions.

Terms used in this document which are not included in this section have the meaning given in the ~~Division of Personnel Administrative Rule of the West Virginia Division of Personnel, 143CSR1, and Pre-employment Reference and Inquiries Rule, 143CSR4, and W. Va. Code § 29-6-2.~~

~~2.1. Applicant: Individual being considered for employment in the classified service of the State of West Virginia, or in the classified service within a County Health Department, and any employee being considered for transfer or promotion to a classified service position for which there is a suitability standard that is different and/or more stringent than the standard for the employee's current position.~~

~~2.2. Appointing Authority: The executive or administrative head of an agency who is authorized by statute to appoint employees in the classified, or classified-exempt service.~~

~~2.3.~~ 2.1. ~~Authorized Designee: Employee~~ "Authorized Designee" means an employee who is designated by a Qualified Entity and approved by the Division of Personnel to receive and process criminal history check request forms from subject individuals, receive criminal history information and make suitability determinations.

~~2.4.~~ 2.2. ~~Contact Person: Employee~~ "Contact Person" means an employee who is designated by an appointing authority and approved by the Division of Personnel to receive and process criminal history check request forms from subject individuals, but who is neither authorized to receive criminal history information nor to make final suitability determinations.

~~2.5. Director: The Director of Personnel, as provided in W. Va. Code §29-6-6 and §29-6-9, who serves as the executive head of the Division of Personnel, or his or her designee.~~

~~2.6.~~ 2.3. ~~Disqualifying Event: Events~~ "Disqualifying Event" means events for which a subject individual

may be denied employment ~~to include those items provided in Section 6.4(a)~~ pursuant to Subdivision 6.4.1 of the Administrative Rule of the West Virginia Division of Personnel Administrative Rule (143CSR1) including the conviction of a crime which has a reasonable connection to the duties and responsibilities of the position for which the applicant or employee is applying, such that permitting employment poses a direct risk to the safety or security of persons, or assets. For the purposes of this definition, a plea of "guilty" or "no contest" is considered a conviction unless the charge was subsequently invalidated by a court decision or a full pardon by the Governor or the President of the United States.

~~2.7.~~ 2.4. Employee: Any "Employee" means any person who lawfully occupies a classified position in an agency and who is paid a wage or salary and who has not severed the employee-employer relationship.

~~2.8.~~ Position: An authorized and identified group of duties and responsibilities assigned by the proper authority requiring the full time or part time employment of at least one person.

~~2.9.~~ 2.5 Qualified Entity: Any "Qualified Entity" means any appointing authority authorized by the Director of Personnel to conduct investigations and/or to secure reports in compliance with the Pre-employment Reference and Inquiries Rule (143CSR4).

~~2.10.~~ 2.6. Subject Individual: An "Subject Individual" means a classified applicant or employee who is subject to a criminal history or background check pursuant to the Pre-employment Reference and Inquiries Rule (143CSR4).

~~2.11.~~ 2.7. Suitability Determination: The "Suitability Determination" means the assessment of a subject individual's criminal background record, central abuse registry record, professional licensing board record, and/or driving record to determine whether the individual's employment in a particular position will be conducive to a safe workplace and public accountability and is not likely to result in damage or injury to others.

~~2.12.~~ 2.8. Transfer: The "Transfer" means the movement of an employee to a classified service position in a different subdivision of an agency or geographic location of the same or a different agency.

~~2.13.~~ 2.9. Year: Twelve "Year" means twelve (12) consecutive month period, unless otherwise specified.

§143-6-3. Notice of Suitability Determination.

3.1. ~~The~~ Upon receipt of a request for a suitability determination, the Director or Authorized Designee shall review the criminal history request form established by the Division of Personnel and make a preliminary suitability determination. If the criminal history request form completed by the subject individual contains information that would make her or him or her ineligible for employment, a suitability determination may be made without requesting a criminal history check.

3.2. Within ten (10) working days after receiving the criminal history reports, the Director or Authorized Designee shall complete the notice of suitability determination form established by the West Virginia Division of Personnel and forward it to the subject individual. The notice of suitability determination form shall contain information regarding the opportunity for appeal.

§143-6-4. Challenging a Suitability Determination.

4.1. If a ~~subject individual~~ current, classified employee wishes to challenge an adverse suitability determination, he or she may appeal the determination by requesting an administrative review. The appointing authority shall not fill the vacant position for which the subject individual applied until completion of the appeal process.

~~a. 4.1.1.~~ In order to request an administrative review, the subject individual or the subject individual's representative must complete and sign the ~~Administrative Review Request, Form PRIA-1, (provided as Attachment A)~~ form prescribed by the Division of Personnel.

~~b. 4.1.2.~~ The subject individual must file the completed and signed ~~PRIA-1~~ form with the Director not later than fifteen (15) calendar days after the notice of suitability determination has been received. The Director may extend the time to appeal if the Director determines the delay was caused by factors beyond the reasonable control of the subject individual.

4.2. When adverse action is taken against a subject individual by an appointing authority and the subject individual requests an administrative review, the Director shall conduct the review, with the Authorized Designee who made the suitability determination, if applicable. If, in the opinion of the Director, an administrative hearing is necessary, the subject individual shall be notified by the Director in writing of the request for a hearing. Procedural rules set forth in West Virginia Code § 29A, State Administrative Procedures Act, shall apply.

~~a. 4.2.1.~~ The subject individual and, if applicable, the subject individual's representative, must participate in the administrative review and/or hearing. If the subject individual fails to participate, the subject individual's right to an administrative review is terminated if, in the opinion of the Director, the subject individual lacks good cause for failure to participate.

~~b. 4.2.2.~~ The purpose of the administrative review determination or hearing is to:

~~1. 4.2.2.a.~~ Inform the subject individual of the rules, regulations, laws, etc., that serve as the basis for the denial,

~~2. 4.2.2.b.~~ Give the subject individual an opportunity to review the information that is the basis for the denial, except as prohibited by State or federal law,

~~3. 4.2.2.c.~~ Ensure the subject individual is provided a thorough explanation of the reason for the denial,

~~4. 4.2.2.d.~~ Give the Director and the subject individual the opportunity to correct any misunderstanding of the facts, and

~~5. 4.2.2.e.~~ Provide an opportunity for the Director and the subject individual to resolve the situation.

~~c. 4.2.3.~~ Upon completion of the administrative review, the subject individual and Authorized Designee are advised by the Director in writing of the decision within thirty (30) calendar days.

~~d. 4.2.4.~~ If the administrative review reverses the adverse action, the appointing authority shall consider the subject individual for the position and the Division of Personnel will permit the subject individual to participate in the competitive employment process and, if applicable, re-certify the subject

individual. However, if the administrative review upholds the original suitability determination, the appointing authority shall not give consideration to the subject individual for the position in question. Further, the Division of Personnel may ~~remove the subject individual from and/or bar the subject individual from certification to applicable civil service registers and/or shall find the subject individual ineligible for promotion into all applicable classifications, for positions in the classified, classified-exempt or exempt service, temporarily or permanently prohibit the reinstatement, appointment, temporary employment, promotion, reallocation, demotion, lateral class change, temporary upgrade, or transfer of an applicant.~~

~~e. 4.2.5. The Director of Personnel may authorize employees of the Division of Personnel to act on her or his or her behalf during an administrative review and/or hearing. The Director retains the right to be represented by the Attorney General in administrative hearings in which the Director issued the initial suitability determination. Such hearings shall be conducted by either the Assistant Director of Staffing Services or the Assistant Director of Employee Relations.~~

f. 4.2.6. Administrative hearings are not open to the public.

~~g. 4.2.7.~~ The subject individual may withdraw an administrative review request by notifying the Director orally or in writing at any time. The withdrawal is effective the date the Director receives notification, after which he or she will issue a dismissal order.

~~h. 4.2.8.~~ When an appeal is resolved, the Director will issue a final order.

i. 4.2.9. The Director shall issue an order effective the date of the scheduled hearing dismissing the appeal if neither the subject individual nor the subject individual's representative appear at the time and place specified for the hearing. The Director will cancel the dismissal order on request of the subject individual or the subject individual's representative on a showing that the subject individual and the subject individual's representative were unable to attend the hearing and unable to request a postponement for reasons beyond their control.

ATTACHMENT A

1) Name of Subject Individual (Claimant) (Last / First / Middle)	2) Date of Birth —(mm/dd/yyyy)	3) Social Security Number
4) Mailing Address _____		5) Home Phone —()—
		6) Date of Suitability Determination —(See Box 10 on PRI-3)
7) Name of Representative (Optional)		8) Phone Number of Representative —()—
9) Address of Representative		
10) Explain why you disagree with the Suitability Determination. Provide supporting documentation (attach additional pages if needed).		
11) Is an interpreter or alternate format required? [list need(s)]	12) Signature	13) Date Signed

If you are denied or restricted following a criminal history check, you may request an administrative review. To request a review, this form must be completed and received by the Director of the West Virginia Division of Personnel not later than fifteen (15) calendar days after the notice of the suitability determination is mailed. Attach a copy of your **Criminal History Request** form (PRI-2) and the **Notice of Suitability Determination** and mail the forms to:

ATTN: Director of Personnel
 West Virginia Division of Personnel
 Capitol Complex, Bldg. 6, Room B-416
 1900 Kanawha Blvd., East
 Charleston, West Virginia 25305-0139

If, in the opinion of the Director, an administrative hearing is necessary, you will be notified in writing of the request for a hearing. You have the right to be represented by a representative of your choosing and may have witnesses testify on your behalf at your own expense. You may withdraw the appeal at any time.

Administrative reviews and/or hearings are conducted in accordance with the West Virginia Division of Personnel Pre-employment Reference and Inquiries Rule (143CSR4) and procedures. If you disagree with the information provided by the West Virginia State Police or Federal Bureau of Investigation, you must cause the reporting entity to submit a copy of the amended record to the Director if you successfully contest the accuracy or completeness of information provided by the applicable entity. Information on how to contact law enforcement agencies is located on the back of the **Criminal History Request** form (PRI-2).

Pursuant to Section 7 of the Privacy Act of 1974, disclosure of social security numbers (SSN) is mandatory. Social security numbers are required to investigate backgrounds with the State Police, Federal Bureau of Investigation, and/or other appropriate entity. Failure to provide a SSN will result in the application being considered incomplete and withdrawn. The West Virginia Division of Personnel has authority to solicit SSN's pursuant to W. Va. Code § 29-6-1, et seq.

DOP USE ONLY	Date Request Received	DOP Representative (Print)	DOP Representative Signature
	Date of Hearing (if applicable)	Outcome of Administrative Review ☐ Initial Suitability Determination upheld ☐ Amended Suitability Determination issued	Date Decision Mailed

PRIA-1 (11/10/05)