TITLE 153
PROCEDURAL RULE
SECRETARY OF STATE

SERIES 1
ELECTRONIC FILING AND FORMATTING OF RULES

§153-1-1. General.

1.1. Scope. -- This rule details procedures and required formatting for filing rules electronically with the Secretary of State's Office.

1.2. Authority. -- W. Va. Code §29A-2-6(c).

1.3. Filing Date. -- October 11, 2017

1.4. Effective Date. -- November 11, 2017

§153-1-2. Definitions.

2.1. "AdLaw" means the Administrative Law Division within the Secretary of State's Office.

2.2. "Agency" means any rule-making entity.

2.3. "Agency head" means the cabinet secretary or top administrator for any agency who has the authority to grant or withhold written consent to the proposal of any rule on behalf of the agency; and without said individual's signature, no proposal for a rule shall have any force or effect (see W. Va. Code §§5F-2-2(12) and (13)).

2.4. "ERF" means electronic rule filing form.

2.5. "eRules User" means the individual(s) who has been granted authority by the agency head to review, edit and print a rule.

2.6. "Fiscal" means the individual(s) who has been granted authority by the agency head to add fiscal information to a rule filing.

2.7. "LRMRC" means Legislative Rule-Making Review Committee.

2.8. "SOS" means Secretary of State.

2.9. "Submission" means a level of access granted by the agency head that gives an individual(s) permission to file a rule electronically on behalf of the agency head.

2.10. "UAA" means universal access account.

§153-1-3. Prior to rule filing.

3.1. A Universal Access Account must be created.

3.1.1. Go to the Secretary of State's website, select the Administrative Law Division page and use the link to the Universal Access Account.

3.1.2. Verify the user name and complete the account setup

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3.1.2.a. User names will be saved in the eRules application.

3.1.2.b. Passwords are not saved in the eRules application. It is the responsibility of the user to remember or store their password for all future filings.

3.2. An original electronic rule filing form (ERF) must be completed, signed, notarized and filed with AdLaw staff.

3.2.1. The agency head will list the specific rules that authority is being granted for. If it is for all of an agency's rules, listing "all" is sufficient.

3.2.2. The agency head will select the level of access being granted.

3.2.3. The agency head will sign the form and have it notarized.

3.2.4. Any changes in staffing will require a new form to be completed prior to permissions being granted.

3.3. Upon completion of the UAA and the ERF, a notification email will be sent that work on rules may begin.

3.4. If an eRules user, fiscal user, submission user or agency head leaves the employment of the agency, a signed statement from the agency must be filed with AdLaw staff in order to remove permissions for that individual in the eRules application.

§153-1-4. Procedures for rule filing.

4.1. Go to the Administrative Law Division page on the Secretary of State's website and select "File eRules". Log in to your UAA.

4.2. Select the request needed for the filing being worked on.

4.2.1. This step is only needed at the start of the process to get the rule set up in the database.

4.2.1.a. If it is a new rule, select "New Title-Series".

4.2.1.b. If it is an amendment to an existing rule, select "New Rule Version".

4.2.1.c. When naming a rule, a brief statement of the main subject matter is sufficient. It is not necessary to include the type of rule, the fact that it is a rule, or the fact that it governs the subject matter in the name.

4.2.1.d. A request form will come up. Complete the form and click on "Send Request".

4.2.2. Upon receipt of the request, AdLaw staff will enable the file and allow access to work on it. An email notification will be sent that this has been done.

4.3. Go to "Your Agencies (In-Progress Rules)" and click on "Edit/Upload/View".

4.4. Find the correct rule file and click on "Edit/Upload/View".

4.5. This will open the "Documents" page. Find the correct description for the filing being worked on.

4.5.1. When putting a rule out for public comment, use the "Notice" field.

4.5.2. Upon conclusion of the comment period, use the "Agency Approved" field for the rule including any changes made based on comments. Use the "Comments Received" field for submitting a copy of all comments and the agency response to each comment (this should be together as 1 document). Use the "Public Hearing" field for submitting the transcript of the hearing and a list of those that were present.

4.5.3. When filing changes based on LRMRC recommendations, use the "Modified File" field.

4.5.4. At the end of the rule-making process, to make the rule effective, use the "Final File" field.

4.5.5. At any point in the rule-making process, when necessary, use the "Emergency" field.

4.5.6. When filing a purely technical amendment to a current rule that does not change the content or intent, use the "Technical Amendment" field.

4.5.6.a. The filing shall include a detailed summary of the changes made and every occurrence of changes in the rule in lieu of strike-throughs and underlines.

4.5.6.b. A clean copy of the full text of the rule including the changes shall be filed.

4.5.6.c. The language for 1.3. of the General section, filing date, of the corrected rule shall be changed to "Technical amendment filed (*list the date of filing in the eRules application)*.

4.5.6.d. The original effective date of the rule shall not be changed.

4.5.7. The "Adopted by Reference", "Other" and "Supporting Documents" fields should be used when applicable.

4.5.7.a. Any tables, charts, diagrams, etc. that are not part of or included in a rule should be filed in one of these fields.

4.6. In the appropriate field, click on "Upload File" and choose "Browse". Find the rule to be submitted and upload it in either Word or WordPerfect. Do not upload a pdf or other file without prior approval from AdLaw staff. Click on "Return to Rule".

4.7. Go to the rule that was just uploaded and click on "View".

4.8. The "Actions" bar will be displayed. Click on "Attach Form".

4.8.1. Only the form needed for that filing will come up in the "Select Form Type" drop down.

4.8.1.a. Select the form and click on the "Attach Form" button to begin.

4.8.1.b. Fill out the form completely.

4.8.2. At the bottom of the form be sure to click the box marked "Attach Form" to add it to the rule filing.

4.8.2.a. At the bottom of the form there is also a "Save for Later" box. This allows the work that has been done to be saved and returned to at a later time.

4.8.2.b. After attaching the form, click on "Return to Document" to complete the filing.

4.9. Carefully review the rule and form.

4.10. Once the filing is complete and accurate, click on "Submit To Agency Head" located on the "Actions" bar where forms are attached.

4.11. The agency head will receive an email that a filing has been submitted.

4.11.1. It is the responsibility of the eRules user to follow up with the agency head and ensure that action is taken.

4.12. The agency head will log in to the eRules application and review the filing.

4.12.1. If the filing is correct, the agency head will click on the "Submit to SOS" tab.

4.12.2. If an error is found, the agency head will click on the "Reject-Request Changes" tab. This will return the filing to the eRules user for further work.

4.13. Upon receiving a rule filing from an agency head, AdLaw staff will review it.

4.13.1. If approved, the rule will be electronically clocked in noting the date filed with the Secretary of State's Office. The eRules user and agency head will each receive an email notification that the filing has been accepted.

4.13.2. If rejected, the eRules user and agency head will each receive an email notification that the filing has been rejected and the reason for the rejection.

4.13.2.a. Possible reasons for SOS rejection of a rule filing include, but are not limited to:

4.13.2.a.1. Rule filed under the wrong title or series number.

4.13.2.a.2. Incorrect formatting or font.

4.13.2.a.3. Using "Track Changes" in the rule.

4.13.2.a.4. Incorrect dates, including sunset provision.

4.13.2.a.5. Incorrect information on rule or attached form.

4.13.2.b. Once all corrections have been made, the eRules user will resubmit the filing to the agency head.

4.13.2.c. The agency head will review the filing and will resubmit it to SOS.

4.14. To make changes to a rule that has been uploaded, the rule must be checked out.

4.14.1. Log in to eRules and find the rule.

4.14.2. Click on "Edit/Upload/View".

4.14.3. Find the appropriate file on the "Documents" page and click on "View".

4.14.4. This will display the "Actions" bar. Click on "Check Out".

4.14.4.a. Right click where indicated and use "save target as", name it and save.

4.14.4.b. The previous screen returns. Select "confirm check out".

4.14.5. Changes to the rule can now be made.

4.14.6. When all work is done, go back to the "Actions" bar.

4.14.7. Click on "Check In".

4.14.7.a. Click on "Browse".

4.14.7.b. Find the corrected rule and upload.

4.15. Upon SOS approval of a Legislative rule filing, LRMRC is notified and receives an electronic copy. No additional filing is needed.

4.16. If the name of the rule is changed any time during the rule-making process, the agency must notify AdLaw staff so the change can be made in the eRules application.

§153-1-5. Required formatting.

5.1. Margins shall be set at 0.5 inch for the top and bottom, and 1 inch for the left and right.

5.2. Document shall be set at one column.

5.3. Font shall be either Times New Roman or Calibri.

5.4. Text size shall be 11 for the body of the rule.

5.5. All rules shall have a header containing the title and series number of the rule (example 153CSR1).

5.5.1. Header shall be centered on the top of each page.

5.5.3. Header shall be in text size 10 and bolded.

5.6. All rules shall have a footer containing the page number.

    5.6.1. Footer shall be centered on the bottom of each page.

    5.6.2. Footer shall be in text size 11 and bolded.

5.7. Tabs shall be set at every .25 inch spaces.

5.8. Every rule shall begin with an introduction that includes the title number, type of rule, name of agency *(followed by double space)*, series number and name of rule. The information shall be centered, bolded, in all capital letters and laid out as follows:

<div align="center">

TITLE NUMBER (example TITLE 153)
TYPE OF RULE (example PROCEDURAL RULE)
NAME OF AGENCY (example SECRETARY OF STATE)
space
SERIES NUMBER (example SERIES 1)
NAME OF RULE

</div>

    5.8.1. Double space and start the first section of the rule.

5.9. Section headings shall contain the title number, series number, section number and name of the section. (Example: **§153-1-5. Formatting.**)

    5.9.1. Section headings shall be bolded.

    5.9.2. Section headings shall start at the left margin and be spaced as follows: §(title #)-(series #)-(section#).(2 spaces) Name of section.

5.10. Section 1 of every rule shall be called "General". This section is reserved for information regarding the circumstances of filing the rule. It shall contain the scope of the rule, the cite authority in W. Va. Code that authorizes the writing of the rule, the filing date, the effective date (for an example, refer to section 1 of this rule). All Legislative rules, except those specifically exempted, must include the sunset provision (see 5.10.3 of this rule).

    5.10.1. The numbering and spacing shall be as follows:

        5.10.1.a. (tab) 1.1.(2 spaces)Scope.(2 spaces)(2 dashes) (2 spaces) Briefly explain the scope of the rule. (2 line returns)

        5.10.1.b. (tab) 1.2.(2 spaces)Authority.(2 spaces)(2 dashes)(2 spaces) W. Va. Code §(code section). (2 line returns)

        5.10.1.c. (tab) 1.3.(2 spaces)Filing Date.(2 spaces)(2 dashes)(2 spaces) Final file date. (2 line returns)

        5.10.1.d. (tab) 1.4.(2 spaces)Effective Date.(2 spaces)(2 dashes)(2 spaces) Effective date of rule. (2 line returns)

5.10.2. The filing date and effective date will be added upon final filing the rule. Prior to that, if it is a new rule, these fields will be blank. If it is an amendment to an existing rule, the dates shall be struck through.

5.10.2.a. The filing date is the date the rule is final filed in the eRules system and cannot be back dated. If filed after daily office hours, use the next day's date.

5.10.2.b. The effective date of the rule can be the same date a legislative rule is final filed up to 90 days after the final file date. For a legislative-exempt, procedural or interpretive rule it shall be at least thirty days after the final filing date. This date cannot be backdated and is not the same as any authorizing bill dates.

5.10.3. All Legislative rules, except for those specifically exempted, shall include a sunset provision (see W. Va. Code §29A-3-19). This shall be numbered 1.5. in the General section and called "Sunset Provision".

5.10.3.1. For all filings prior to the final filing, the language used shall be: "This rule shall terminate and have no further force or effect upon the expiration of *(the number of)* years from its effective date."

5.10.3.1.a. For new rules, it shall be 5 years (see W. Va. Code §29A-3-19(a)).

5.10.3.1.b. For an amendment to an existing rule, the number of years shall be determined by the agency and LRMRC (see W. Va. Code §29A-3-19(b)).

5.10.3.2. Upon final filing the rule, the language shall be modified to: "This rule shall terminate and have no further force or effect upon *(the actual date will be given)*.

5.11. Underlining shall indicate language to be added to a rule. There shall be no underlining of text except to indicate new language to be added to an existing series. New rules may be completely underlined.

5.12. Strike-throughs shall indicate language to be deleted from a rule. Repealed legislative rules shall be completely struck-through (see W. Va. Code §29A-3-1a(b)).

5.13. "Track changes" shall not be used in rule filings. This could cause the rule to appear incorrectly online in the rules database. This is the responsibility of the eRules user.

5.14. Capitalization shall be used only for proper names, the first word in a sentence, abbreviations which are routinely capitalized or as necessary for words defined by the rule. Do not capitalize for emphasis.

5.15. Repeal and Replace should not be used routinely in rule filing. This is only for proposing major changes to an existing rule involving the majority of sections.

5.15.1. Repealing and replacing a legislative rule requires prior approval from LRMRC.

5.15.1.a. Upon LRMRC approval, a repealer clause shall be added to the "General" section of the rule as 1.6.

5.15.1.b. The repealer clause shall state the rule to be repealed by its citation, name, filing date and effective date. (Example: This legislative rule repeals and replaces 153CSR999 "Documents Filed in the Secretary of State's Office" filed April 1, 2011 and effective April 1, 2011.)

5.15.2. The repealed and replaced rule will be filed by the procedures outlined in this rule.

5.16. The repeal of a legislative rule shall complete the full rulemaking process.

5.16.1. A notice of public comment period shall be filed with the rule. The rule will be completely struck through and the accompanying form will be checked indicating that the rule is to be repealed.

5.16.2. The struck through rule and attached notice will be filed with LRMRC.

5.16.3. Upon approval from the Legislature and the signature of the Governor on the authorizing bill, the rule shall be final filed.

5.16.4. The final filed rule shall include the header and introduction (see 5.9 of this rule) with all of the struck-through language removed from the rule and replaced with the following language:

5.16.4.a. This rule was repealed by *(list the house or senate bill)*, effective *(effective date of bill)*.

5.17. When repealing a legislative-exempt, procedural or interpretive rule, a letter signed by the agency head will be filed. The letter will indicate the name of the agency, the title and series number of the rule, the name of the rule, the effective of date of the rule and the date the repeal will be effective.

5.18. An agency shall file full text of a rule when proposing an amendment to an existing rule (see W. Va. Code §§29A-3-1a(a), 29A-3-5 and 29A-3-11(a)(1)).

5.19. The numbering of an item in a rule shall end with a period followed by two spaces. Double space between numerated items.

5.20. Indentions shall be made using tab (see 5.7. of this rule).

5.21. Tables, charts, diagrams, etc. that are included as part of a rule, shall be named as "Table", "Chart", "Diagram", etc. followed by the title number and series number of the rule in which they are located. For multiples, a letter beginning with attachment "A" for the first table, chart diagram, etc.; attachment "B" for the second table, chart, diagram, etc. and so on.

5.22. A decimal and alphanumeric outline format shall be used with indentions for breakdowns of rule provisions. Each breakdown will add an indention and either a number or letter.

5.22.1. Section headings shall start at the left margin and shall contain the title number, series number, section number and name of section (see 5.10. of this rule).

5.22.2. Section number shall be indented once and shall contain the section heading number and numeration (Example: 5.1.).

5.22.3. Subsection shall be indented twice and shall contain the heading number, section number and numerated subsection number (Example: 5.1.1.).

5.22.4. Subdivision breakdown shall be indented three times and contain the heading number, section number, numerated subsection number followed by lower case lettering. (Example: 5.1.1.a.).

5.22.5. Paragraph breakdown shall be indented 4 times and contain the heading number, section number, numerated subsection number, lettering followed by numeration. (Example: 5.1.1.a.1.).

5.22.6. Subparagraph breakdown shall be indented 5 times and contain the heading number, section number, numerated subsection number, lettering, numeration followed by a capital letter. (Example: 5.1.1.a.1.A.).

5.22.7. Part breakdown shall be indented 6 times and contain the heading number, section number, numerated subsection number, lettering, numeration, capital letter followed by a number. (Example: 5.1.1.a.1.A.1.).

5.22.8. Subpart breakdown shall be indented 7 times and contain the heading number, section number, numerated subsection number, lettering, numeration, capital letter, number followed by a lower case letter in parenthesis. (Example: 5.1.1.a.1.A.1.(a)).

5.22.9. Item breakdown shall be indented 8 times and contain the heading number, section number, numerated subsection number, lettering, numeration, capital letter, lower case letter in parenthesis followed be a number in parenthesis. (Example: 5.1.1.a.1.A.1.(a)(1)).

5.22.10. Subitem breakdown shall be indented 9 times and include the heading number, section number, numerated subsection number, lettering, numeration, capital letter, lower case letter in parenthesis, number in parenthesis followed by a capital letter in parenthesis. (Example: 5.1.1.a.1.A.1.(a)(1)(A)).

5.23. For a full example of proper text breakdown, see the table below.

TABLE 153-1

§153-1-6. Section heading for text breakdown table.

6.1. Section.

6.1.1. Subsection.

6.1.1.a. Subdivision.

6.1.1.a.1. Paragraph.

6.1.1.a.1.A. Subparagraph.

6.1.1.a.1.A.1. Part.

6.1.1.a.1.A.1.(a) Subpart.

6.1.1.a.1.A.1.(a)(1) Item.

6.1.1.a.1.A.1.(a)(1)(A) Subitem.