

US EPA ARCHIVE DOCUMENT

## **APPENDIX I**

**WV 153 CSR 6**

**TITLE 153  
LEGISLATIVE RULES  
SECRETARY OF STATE**

**SERIES 6  
STANDARD SIZE AND FORMAT FOR RULES AND PROCEDURES FOR  
PUBLICATION  
OF THE STATE REGISTER OR PARTS OF THE STATE REGISTER**

**§153-6-1. General.**

1.1. Scope. -- This legislative rule establishes the standard size and format for legislative, procedural and interpretive rules and related documents filed in the Secretary of State's office and procedures for publication of documents from the State Register.

1.2. Authority. -- W. Va. Code §§29A-2-6(c) and 29A-2-7(I).

1.3. Filing Date. -- March 26, 1996.

1.4. Effective Date. -- June 7, 1996.

**§153-6-2. Definitions.**

2.1. Agency Approved. -- Every rule proposed by an agency and which has completed the public hearing or public comment period, approved by the agency and submitted for Legislative review.

2.2. Emergency. -- Any legislative rule filed by an agency finding that the rule must be effective before completing the full Legislative cycle, promulgated in accordance with W. Va. Code §29A-3-15, and promulgation is necessary for the immediate preservation of the public peace, health, safety or welfare is necessary to comply with a time limitation, established by W. Va. Code or by a federal statute or regulation or to prevent substantial harm to the public interest.

2.3. Interpretive. -- Every rule, adopted by an agency independently of any delegation of legislative power which is intended by the agency to provide information or guidance to the public regarding the agency's interpretations, policy or opinions upon the law enforced or administered by

it, and which is not intended by the agency to be determinative of any issue affecting private rights, privileges or interests.

2.4. Legislative. -- Every rule, proposed or promulgated by an agency pursuant to W. Va. Code §29A-3 et seq., which, when promulgated after or pursuant to authorization of the legislature, has (1) the force of law, (2) supplies a basis for the imposition of civil or criminal liability, or (3) grants or denies a specific benefit. Every rule, which, when effective, is determinative on any issue affecting private rights, privileges or interests is a legislative rule. Unless lawfully promulgated as an emergency rule, a legislative rule is only a proposal by the agency and has no legal force or effect until promulgated by specific authorization of the legislature.

2.5. Legislative Exempt. -- Any rule filed that has been given a specific exemption from following the procedures for rulemaking found in W. Va. Code §29A-1-3. or in other sections of the W. Va. Code. Examples of such exemptions are: Board of Probation and Parole, Public Service Commission, Board of Public Works, or Secondary Schools Activities Commission. Also exempt are rules relating to or contested cases involving the conduct of inmates or other persons admitted to public institutions, open seasons and the bag, creel, size, age, weight and sex limits with respect to the wildlife in this state, the conduct of persons in military service or the receipt of public assistance.

2.6. Modified. -- Every rule that has been changed to incorporate suggested changes from the Legislative Rule Making Review Committee (LRMRC) with agreement of the agency.

2.7. Procedural. -- Every rule which fixes rules of procedure, practice or evidence for dealings

with or proceedings before an agency, including forms prescribed by the agency.

### **§153-6-3. Standard Size Of Rules And Related Documents.**

3.1. All rules and related documents shall be typed on white 8 ½ inch by 11 inch paper, single spaced and either on one (1) side or double sided, but not a combination of both, unless specifically exempted by this rule.

3.2. All rules shall have at least ½ inch on the left, right, top and bottom margins surrounding the text unless specifically exempted by this rule.

### **§153-6-4. Forms and Other Documents.**

The following forms are to be included when an agency files a rule with the Secretary of State, unless specifically exempted by another section of this rule. (All forms are at the end of this rule.)

4.1. When an agency files a legislative, procedural or interpretive rule for public hearing or public comment period, the following documents must be included:

4.1.a. Form 1 -- Notice of public hearing on a proposed rule. This form is used if the agency wants to hold a public hearing or if the agency wants to hold a public hearing and comment period.

4.1.b. Form 2 -- Notice of comment period on a proposed rule. This form may be used if the agency wants only to have a public comment period.

4.1.c. Brief summary of the rule;

4.1.d. Statement of circumstances which require the proposed rule;

4.1.e. Appendix B -- Fiscal note and

4.1.f. The signature of the cabinet secretary or department head of those agencies not covered by a cabinet secretary on the notice of public hearing or comment period or a letter authorizing filing of the rule.

4.2. When an agency files a legislative rule as an agency approved rule, the following documents must be included:

4.2.a. Form 3 -- Notice of agency approval of proposed rule and filing with the LRMRC;

4.2.b. Brief summary of the rule;

4.2.c. Statement of circumstances which require the proposed rule;

4.2.d. Appendix B -- Fiscal note;

4.2.e. LRMRC questionnaire signed and with contact person's name, address and telephone number clearly typed or printed;

4.2.f. The signature of the cabinet secretary or the department head of those agencies not covered by a cabinet secretary on the notice of agency approval or a letter authorizing filing of the rule.

4.2.g. The entire rule;

4.2.h. Transcript of hearing, if applicable, and a copy of all written comments and

4.2.i. Response to the comments.

4.3. When an agency files a modified rule following review by LRMRC, the following documents must be included:

4.3.a. Form 4 -- Notice of modification of a proposed rule;

4.3.b. Either the signature of the cabinet secretary or department head (of those agencies not covered by a cabinet secretary) on the notice of rule modification or a letter authorizing filing of the rule and

4.3.c. The rule as approved by LRMRC.

4.4. When an agency files a agency adoption of a procedural or interpretive rule, the following documents must be included:

4.4.a. Form 5 -- Notice of agency adoption of a procedural or interpretive rule or a legislative rule exempt from legislative review;

4.4.b. The signature of the cabinet secretary or the department head of those agencies not covered by a cabinet secretary on the notice of agency adoption or a letter authorizing filing of the rule;

4.4.c. If changes were made because of the comments received, the entire rule;

4.4.d. Transcript of hearing, if applicable, and a copy of all written comments;

4.4.e. Response to the comments, and

4.4.f. Electronic filing of the rule. (See section 14 of this rule.)

4.5. When an agency files a legislative exempt rule, the following documents must be included:

4.5.a. Form 5 -- Notice of agency adoption of a procedural or interpretive rule or a legislative rule exempt from legislative review;

4.5.b. Brief summary of the rule;

4.5.c. Statement of circumstances which required the proposed rule;

4.5.d. Appendix B -- Fiscal note;

4.5.e. The signature of the cabinet secretary or the department head of those agencies not covered by a cabinet secretary on the notice of agency adoption or a letter authorizing filing of the rule and

4.5.f. Electronic filing of the rule. (See section 14 of this rule.)

4.6. When an agency final files a legislative rule following approval by the Legislature, the following documents must be included:

4.6.a. Form 6 -- Notice of final filing and adoption of a legislative rule authorized by the West Virginia Legislature;

4.6.b. Promulgation history;

4.6.c. The signature of the cabinet secretary or the department head of those agencies not covered by a cabinet secretary on the notice of agency adoption or a letter authorizing filing of the rule and

4.6.d. Electronic filing of the rule. (See section 14 of this rule.)

4.7. When an agency files a rule as an emergency rule or an emergency amendment, the following documents must be included:

4.7.a. Form 7 -- Notice of an emergency rule, or

4.7.b. Form 8 -- Notice of an emergency amendment to an emergency rule;

4.7.c. Brief summary of the rule;

4.7.d. Specific statement of circumstances which require the rule to be filed as an emergency;

4.7.e. Appendix B -- Fiscal note;

4.7.f. LRMRC questionnaire signed by the contact person with their name, address and telephone number clearly typed or printed and

4.7.g. The signature of the cabinet secretary or the department head of those agencies not covered by a cabinet secretary on the notice of emergency rule or emergency amendment or a letter authorizing filing of the rule.

#### **§153-6-5. Numbering And Indentation.**

5.1. All agencies shall have a title number assigned by the Secretary of State.

5.2. All rules of an agency shall have a series number assigned by the Secretary of State.

5.3. Text breakdowns shall be found in Table 153-6A at the end of this rule. All new series rules

and repealed and replaced rules shall follow this breakdown. When filing amendments to existing series, the agency shall retype the entire series and utilize this breakdown.

5.4. Section headings shall contain the title number, series number, section number and name of the section. (Example: §153-6-4. Numbering and indentation.)

5.5. Subsections shall contain the section number and subsection number. (Example 4.5 or 4.6 etc.)

5.6. Breakdowns below the subsection level shall contain only the number or letter for the appropriate level as required by subsection 4.3 of this rule.

5.7. Each breakdown shall be indented from the preceding level on the first line, but shall be carried back to the left margin for the second and succeeding lines of text.

#### **§153-6-6. Underlining, Strike-Throughs And Capitalization.**

6.1. There shall be no underlining of text except to indicate new language to be added to an existing series.

6.2. Underlining shall indicate language to be added to a rule.

6.3. Strike-throughs shall indicate language to be deleted from a rule.

6.4. There shall be no capitalization except for proper names, the first word in a sentence or abbreviations which are routinely capitalized. When there is a doubt, words should not be capitalized. Do not capitalize for emphasis.

#### **§153-6-7. Repeal And Replacement.**

7.1. When an agency is proposing major changes to an existing rule involving the majority of sections, the agency may wish to repeal the existing rule in its entirety and replace the rule as a new rule. In this case the agency shall file the proposed rule

without underlining and strike-throughs, if the agency includes in the general section a repealer clause.

7.2. The repealer clause shall be in the general section. It shall state that the prior rule is to be repealed and replaced. It shall state the rule to be repealed by its citation, name, filing date and effective date.

7.2.a. Example: -- 1.5. Repeal of former rule. -- This legislative rule repeals and replaces WV 153CSR6 "Standard Size and Format for Rules and Related Documents Filed in the Secretary of State's Office" filed April 1, 1988 and effective April 1, 1988.

7.3. If the agency does not include a repealer cause, then the agency shall include underlining and strike-throughs to indicate language changes.

7.4. The procedure and format for filing a repealed and replaced rule shall be the same as those for a new series rule as required under section 9 of this rule.

#### **§153-6-8. Incorporation By Reference.**

8.1. Documents incorporated by reference shall be filed at the time the proposed rule is filed.

8.2. When incorporating by reference, the document shall be identified its proper title, proper citation, date and any other information needed to clearly identify the document to be incorporated.

8.3. It is not necessary to file the following documents when they are incorporated by reference:

8.3.a. West Virginia Code; and

8.3.b. West Virginia Code of State Rules

#### **§153-6-9. Filing Proposed Amendments To An Existing Series.**

9.1. Filing for public hearing or comment period.

9.1.a. The agency shall file with the Secretary of State the entire existing rule series regardless of the amount of proposed changes. The notice for public hearing or comment period must be attached.

9.1.b. All language to be deleted shall be stricken through, but clearly legible. All the language to be added shall be underlined.

9.1.c. Amendments shall not change the series number of the existing rule unless the change has been approved by the Secretary of State.

9.2. Filing of agency approved legislative rules following a public hearing or comment period.

9.2.a. An agency must file an agency approved rule with both the Secretary of State and LRMRC within ninety (90) days following public hearing or comment period.

9.2.b. If no change has been made to the rule filed for a public hearing or comment period, the agency shall file with the Secretary of State the notice of agency approval, a copy of the entire proposed rule with changes underlined and struck-through, a copy of all comments received and a response to all of the comments. When several comments are of a similar nature, one response to the comments is sufficient. The entire rule series with all attachments shall be filed with the LRMRC.

9.2.c. If changes have been made, the agency shall file with the Secretary of State the notice of agency approval, include the changes and refile the entire proposed series with changes underlined and struck-through, as if the previous filing had not occurred. The agency shall also file a summary of changes made as a result of the public hearing, a copy of all comments received, and a brief response to all comments. When several comments are of a similar nature, one response to the comments is sufficient. The entire rule series with all attachments shall be filed with LRMRC.

9.3. Filing legislative exempt, procedural and interpretive agency adopted rules following public hearing or comment period.

9.3.a. For those procedural or interpretive rules filed as agency adopted rules when no change has been made to the rule filed for public hearing or comment period, the agency shall file with the Secretary of State a notice of agency adoption, a promulgation history, a copy of all comments, and a response to all comments and a copy of the rule electronically. (See section 14 of this rule.) When several comments are of a similar nature, one response to the comments is sufficient.

9.3.b. If changes have been made, the agency shall file with the Secretary of State a notice of agency adoption, include the changes and refile the entire proposed changes with underlining and strike-throughs as if the previous filing had not occurred. The agency shall also file a summary of changes made as a result of the public hearing, a copy of all comments received, as well as a brief response to all comments and a copy of the rule electronically. (See section 14 of this rule.) When several comments are of a similar nature, one response to such comments will suffice.

9.3.c. For those agencies or rules exempt from the Administrative Procedures Act (§29A-1-3) and whose filing with the Secretary of State of an agency adopted rule represents the first and only filing of changes to an existing series, the agency shall include all necessary underlining and strike-throughs to indicate language to be deleted and language to be added. The agency shall also file the rule electronically. (See section 14 of this rule.)

9.4. Filing of modifications to legislative rules due to LRMRC objections.

9.4.a. The agency shall refile with the Secretary of State and LRMRC the entire series rule with the modifications included.

9.4.b. This filing shall be within ten (10) days of the date of the LRMRC meeting of which the modifications were approved.

9.5. Final filing of legislative rules authorized by the legislature.

9.5.a. The agency shall file the notice of agency adoption, a promulgation history and also

file the rule electronically. (See section 14 of this rule.) The Secretary of State shall produce the final rule from the last filing, with underlinings and strike-throughs, and any legislative amendments within the enrolled bill of authorization.

9.5.b. The final rule as produced by the Secretary of State shall be sent to the agency for review and proofing. The agency has to ten (10) working days to review the final rule and return any corrections or a statement confirming the accuracy of the final rule.

9.5.c. Following confirmation or corrections, as the case may be, the Secretary of State shall final file the proposed rule and include it in the official West Virginia Code of State Rules.

9.5.d. The official rule is the rule authorized by the Legislature, produced by the Secretary of State, confirmed by the agency and filed in the West Virginia Code of State Rules.

#### **§153-6-10. Filing Of A Proposed New Series Rule.**

10.1. This section applies to an agency proposing an entirely new series rule which is not an amendment to an existing rule and which requires the assignment of a new series number.

10.2. The proposed new series rule shall be designated as either a "legislative rule", "procedural rule" or "interpretive rule".

10.3. All proposed new series shall contain a section one "General" which shall include the following subsections -- 1.1. Scope, 1.2. Authority, 1.3. Filing Date, and 1.4. Effective date. During the time the rule is proposed, the filing date and effective date shall be blank.

10.4. Filing for public hearing or comment period.

10.4.a. The agency shall file with the Secretary of State the entire proposed new series rule. There will, of course, be no strike-throughs or underlining. The notice for public hearing or comment period must be attached.

10.5. Filing of an agency approved legislative rule following public hearing or comment period.

10.5.a. An agency must file with the Secretary of State and with LRMRC an agency approved rule within ninety (90) days following public hearing or comment period.

10.5.b. If no changes have been made to the rule filed for public hearing or comment period, the agency shall file with the Secretary of State the notice of agency approval, a copy of the entire proposed rule with changes, a copy of all comments received and a response to all of the comments. When several comments are of a similar nature, one response to the comments is sufficient. The entire series with all attachments shall be filed with the LRMRC.

10.5.c. If changes have been made to the rule, the agency shall file with the Secretary of State the notice of agency approval, and refile the entire proposed series with changes included, but without underlines and strike-throughs. The agency shall also file a summary of changes made as a result of the public hearing, a copy of all comments received and a brief response to all comments. When several comments are of a similar nature, one response to the comments is sufficient. The entire rule series with all attachments shall be filed with LRMRC.

10.6. Filing legislative exempt, procedural and interpretive agency adopted rules following public hearing or comment period.

10.6.a. For those procedural or interpretive rules filed as agency adopted rules when no change has been made to the rule filed for public hearing or comment period, the agency shall file with the Secretary of State a notice of agency adoption, a promulgation history, a copy of all comments, and a response to all comments and a copy of the rule electronically. (See section 14 of this rule.) When several comments are of a similar nature, one response to the comments is sufficient.

10.6.b. If changes have been made, the agency shall file with the Secretary of State a notice of agency adoption and refile the entire proposed rule without underlining and strike-throughs as if the



previous filing had not occurred. The agency shall also file a summary of changes made as a result of the public hearing, a copy of all comments received, as well as a brief response to all comments and a copy of the rule electronically. (See section 14 of this rule.) When several comments are of a similar nature, one response to such comments will suffice.

10.6.c. For those agencies or rules exempt from Administrative Procedures Act (§29A-1-3), and whose filing of an agency adopted rule represents the first and only filing, the agency shall file with the Secretary of State the entire series, without underlining and strike-throughs and a copy of the rule electronically. (See section 14 of this rule.)

10.7. Filing of modification to legislative rules due to LRMRC objections.

10.7.a. The agency shall refile the entire series rule with the Secretary of State and with LRMRC with the modifications included.

10.7.b. This filing shall be within ten (10) days of the date of the LRMRC meeting at which the modifications were approved.

10.8. Final filing of legislative rules authorized by the Legislature.

10.8.a. The agency shall file with the Secretary of State the notice of agency adoption, a promulgation history and a copy of the rule electronically. (See section 14 of this rule.) The Secretary of State shall produce the final rule from the last filing, with underlining and strike-throughs, and any legislative amendments within the enrolled bill of authorization.

10.8.b. The final rule as produced by the Secretary of State shall be sent to the agency for review and proofing. The agency has up to ten (10) working days to review the final rule and return any corrections or a statement of confirmation.

10.8.c. Following confirmation or corrections, as the case may be, the Secretary of State shall final file the proposed rule and include it in the official West Virginia Code of State Rules.

10.8.d. The official rule shall be the rule authorized by the legislature, produced by the Secretary of State, confirmed by the agency and filed in the West Virginia Code of State Rules.

#### **§153-6-11. Filing Of Emergency Rules.**

11.1. Filing amendments to an existing series as an emergency rule.

11.1.a. The agency shall utilize strike-throughs and underlining to indicate amendments.

11.1.b. The agency shall attach the proper notice.

11.2. Filing a new series rule as an emergency rule.

11.2.a. The agency shall file the entire rule with proper notice.

11.3. Filing of amendments to an emergency rule.

11.3.a. When amending an emergency rule which was initially filed as amendments to an existing series as in subsection 11.1, the agency shall include the new amendments and refile the entire proposal with underlining and strike-throughs, as if the previous filing had not occurred. This will not result in any added time to the lifespan of the initially filed emergency rule.

11.3.b. When amending an emergency rule which was initially filed as a new series rule, the agency shall include the amendments with underlining and strike-throughs and refile the entire proposal, as if the previous filing had not occurred. This will not result in any additional time to the lifespan of the initially filed emergency rule.

#### **§153-6-12. Tables, Charts, Diagrams, Etc.**

12.1. When an agency needs to include charts, tables, diagrams or other information which is not in a typical narrative format, the agency shall refer to the table, chart, diagram, etc. within the text at the location the table, chart, diagram, etc. is to be located, but the actual table, chart, diagram, etc. will

be attached to the back of the proposal. An example of this can be found in this rule in subsection 4.4.

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

12.3. Exceptions may be made by the Secretary of State for tables, charts, diagrams, etc. which can be reproduced and fit into the double column format.

#### **§153-6-13. Effective Dates.**

13.1. The effective date of the series found in the general section shall be the date the rule was initially adopted or the date of the last change to the series, whichever is latest.

13.1.1. The effective date of the general section shall remain unless the rule is repealed and replaced utilizing a repealer clause. In that case, the effective date in the general section shall be the date the replacement rule becomes effective.

13.1.2. Effective dates for amendments to sections of an existing rule shall be noted in parenthesis at the section heading of the section amended. This will allow the user to historically follow amendments to sections.

#### **§153-6-14. Electronic Filing.**

14.1. An agency must file the rule in an electronic format, following all formatting rules of the Secretary of State unless given specific written exemption from the Secretary of State.

14.1.a. If an agency subscribes to the Legislative Computer System (Edgar), the rule may be electronically transferred.

14.1.b. If an agency does not subscribe to Edgar, the rule must be filed on a high density diskette in a WordPerfect or WordPerfect compatible format.

14.1.b.1. The electronic copy must have all underlinings and stricken-through language removed.

14.1.b.2. The electronic copy must not have any headers or footers either set up through the format or typed on individual pages.

14.2. If an agency does not comply with the formatting as specified by the Secretary of State, the electronic version will be refused and sent back for correction to the agency.

#### **§153-6-15. Publication Of Materials From The State Register.**

15.1. The State Register shall be established and maintained by the Administrative Law Division of the Secretary of State.

15.2. The State Register shall consist of the following parts:

15.2.a. The West Virginia Code of State Rules;

15.2.b. The West Virginia Register;

15.2.c. The Open Meeting File;

15.2.d. The Orders File;

15.2.e. Other Agency Action File; and

15.2.f. The Obsolete File

15.3. The West Virginia Code of State Rules (WVCSR).

15.3.a. The WVCSR is the official compilation of state agency rules currently in effect, excluding emergency rules.

15.3.b. The Secretary of State shall supplement the WVCSR monthly with any changes to the current rules filed during the previous month. The full text of the particular series, whether new or

amended, shall be sent to subscribers of the WVCSR. Emergency rules shall be cited as being filed, but the text of emergency rules shall not be a part of the monthly supplement.

15.3.c. The Secretary of State may contract for publication and maintenance of the WVCSR, or parts thereof, but the Secretary of State is responsible for the codification and validity of all state agency regulations filed by state agencies for inclusion in the WVCSR.

15.3.d. The Secretary of State may offer parts of the WVCSR with a supplement service.

15.3.e. The WVCSR shall be a looseleaf publication available at a cost established by the Secretary of State to defray the expense of publication and supplements.

15.3.f. Parts of the WVCSR may be available through duplication or other means at a cost to defray the expense to the Secretary of State.

#### 15.4. The West Virginia Register (WVR).

15.4.a. The WVR is a weekly publication of notices and other announcements filed with the Secretary of State relating to rule-making, open meetings, orders and other actions by state agencies.

15.4.b. The WVR shall be distributed by annual subscription at a cost established by the Secretary of State to defray the expense of production and delivery.

#### 15.5. The Open Meetings File.

15.5.a. The Open Meetings File consists of notices filed by agencies with the Secretary of State for open governmental proceedings under W. Va. Code, §6-9A-3.

15.5.b. Notices which are filed and found to be in violation of the notice requirements of W. Va. Code, §6-9A-3 shall be published, but shall indicate noncompliance. A copy of this finding and the reasons for noncompliance shall be sent to the agency affected.

#### 15.6. The Orders File.

15.6.a. The Orders File consists of Orders issued by state agencies following contested case hearings and required to be filed with the Secretary of State pursuant to W. Va. Code, §29A-9-2.

#### 15.7. Other Agency Action File.

15.7.a. The Other Agency Action File consists of all other information required to be filed with the Secretary of State by statute, rule or agency directive or practice. Notice of the filings shall be included in the WVR.

15.8. Obsolete File.

15.8.a. The Obsolete File shall consist of obsolete rules of state agencies. The Secretary of State is responsible for certifying the time period during which obsolete rules were in effect.

TABLE 153-6 A  
TEXT BREAKDOWN

153 CSR	TITLE
153 CSR 6	SERIES
153 CSR 6-1.	SECTION
153 CSR 6-1.1.	SUBSECTION
153 CSR 6-1.1.a.	SUBDIVISION
153 CSR 6-1.1.a.1.	PARAGRAPH
153 CSR 6-1.1.a.1.A.	SUBPARAGRAPH
153 CSR 6-1.1.a.1.A.1.	PART
153 CSR 6-1.1.a.1.A.1.(a)	SUBPART
153 CSR 6-1.1.a.1.A.1.(a)(1)	ITEM
153 CSR 6-1.1.a.1.A.1.(a)(1)(A)	SUBITEM