

DATE: Aug. 17, 1987

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Rich O. Hartman, Dir. Admin. Law Div.

LEGISLATIVE RULE TITLE:

1. Authorizing statute(s) citation WV Code, 29A-2-6(c);

29A-2-7(i)

2. a. Date filed in State Register with Notice of Hearing:

7-16-87

b. What other notice, including advertising, did you give of the hearing?

Sent copies of proposal to Dept. Health and

Dept. of Natural Resources

c. Date of hearing (s): Aug. 17, 1987, 1:00pm

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached XXXX

No comments received _____

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing:
(be exact)

Aug. 17, 1987

f. Name and phone number of agency person to contact for additional information:

Rich O. Hartman

345-4000

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing: N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

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 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. --

1.4. Effective Date. --

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 15, 1986 and effective April 15, 1986.

§153-6-2. Standard size of rules and related documents.

2.1. All rules and related documents shall be typed on white 8 1/2 inch by 11 inch paper, single spaced and on one (1) side only unless specifically exempted by these rules.

2.2. All rules shall have at least 1/2 inch on the left, right, top and bottom surrounding the text unless specifically exempted by these rules.

§153-6-3. Numbering and indentation.

3.1. All agencies shall have a title number assigned by the secretary of state.

3.2. All rules of an agency shall have a series number assigned by the secretary of state.

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

and repealed and replaced rules shall follow this breakdown. When filing amendments to existing series, the agency may retype the entire series and utilize this breakdown if desired. This office encourages this practice when time and resources allows this to be done.

3.4. Section headings shall contain the title number, series number, section number and name of section (Example: §153-6-3. Numbering and indentation.)

3.5. Subsections shall contain the section number and subsection number. (Example 3.5 or 3.6 etc.)

3.6. Breakdowns below the subsection level shall contain only the number or letter for the appropriate level as directed by subsection 3.3.

3.7. 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.

§153-6-4. Underlining, strike-throughs and capitalization.

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

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

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

4.3.1. If an agency wishes to delete an entire section or sections of text which involve numerous pages, the agency may state within the proposed rule at the beginning of the section or sections to be deleted which section or sections are to be deleted. This will allow the agency to avoid retyping pages of text

with strike-throughs. The agency shall indicate clearly and accurately which section or sections are to be deleted.

4.4. There shall be no capitalization except for proper names, first word in a sentence or abbreviations which are routinely capitalized. When in doubt, do not capitalize. Do not capitalize for emphasis.

§153-6-5. Repeal and replacement.

5.1. When an agency is proposing major changes to an existing rule where it involves 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.

5.2. 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. Refer to subsection 1.5 of this rule for an example of a repealer clause.

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

5.4. The procedure and format for filing a repealed and replaced rule shall be the same as those for a new series rule in §153-6-8.

§153-6-6. Incorporation by reference.

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

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

6.3. If the document is less than twenty (20) pages, it must be set out in the regulation and not incorporated by reference.

6.4. It is not necessary to file the following documents when incorporated by reference:

6.4.1. United States Code

6.4.2. West Virginia Code

6.4.3. Code of Federal Regulations

6.4.4. Federal Register

6.4.5. West Virginia Code of State Rules

6.4.6. Supreme Court decisions (Federal or State)

§153-6-7. Filing proposed amendments to an existing series.

7.1. Filing for public hearing or comment period.

7.1.1. The agency shall file only those sections or subsections to be amended or added to the existing rule series.

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

7.1.3. Amendments shall not change the series number of the existing rule unless such change has been approved by the secretary of state.

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

7.2.1. If no change has been made to the rule filed for public hearing or comment period, the agency shall only file the notice of agency approval or agency adopted, as the case may be, with the secretary of state. The entire rule series shall be filed with the Legislative Rule-Making Review Committee (LRMRC).

7.2.2. If changes have been made, the agency shall include those changes and refile the entire proposed series with changes underlined and struck-throughs, as if the previous filing had not occurred. The agency shall also file as a separate document a summary of changes made as a result of the public hearing.

7.3. Filing agency adopted rules following public hearing or comment period.

7.3.1. 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 com-

ment period the agency shall only file a notice of agency adoption.

7.3.2. If changes have been made, the agency shall include those changes and refile the entire proposed changes with underlining and strike-throughs as if the previous filing had not occurred.

7.3.3. For those agencies or rules exempt from the Administrative Procedures Act and whose filing 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.

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

7.4.1. The agency may file on a separate sheet(s) the modification(s) to their proposal or refile the entire series including the modification(s).

7.4.2. This filing shall be no later than the twentieth day of the legislative session in which the proposed amendments are to be introduced for authorization.

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

7.5.1. The agency shall only file the proper notice. 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.

7.5.2. The final rule as produced by the secretary of state shall be sent to the agency for review and proofing. The agency may have up to ten (10) working days to review the final rule and return any corrections or a statement of confirmation.

7.5.3. 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.

7.5.4. 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.

§153-6-8. Filing of a proposed new series rule.

8.1. 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.

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

8.3. All proposed new series shall contain a section one "general" which shall include the following subsections -- scope, authority, filing date, effective date. During the time the rule is proposed, the filing date and effective date shall be blank.

8.4. Filing for public hearing or comment period. The agency shall file the entire proposed new series rule. There will, of course, be no strike-throughs or underlining. The proper notice shall be attached.

8.5. Filing agency adopted interpretive and procedural rules.

8.5.1 If no changes have been made to the rule filed for public hearing or comment period, the agency shall only file the notice of agency adoption.

8.5.2. If changes have been made, the agency shall include those changes and refile the entire rule with proper notice.

8.5.3. If the agency or rule to be adopted is exempt from the Administrative Procedure Act and this filing represents the first and only filing of a new series rule, the agency shall file the entire rule with proper notice.

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

8.6.1. If no changes have been made to the rule filed for public hearing or comment period, the agency shall only file the proper notice with the secretary of state. The entire series shall be filed with the LRMRC.

8.6.2. If changes have been made to the rule, such changes shall be designated by strike-throughs and underlining and filed with the proper notice.

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

8.7.1. The agency may file on a separate sheet(s) the modification(s) to their proposal or refile

the entire series including the modification(s).

8.7.2. This filing shall be no later than the twentieth day of the legislative session in which the proposed new series rule is to be introduced for authorization.

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

8.8.1. The agency shall only file the proper notice. 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.

8.8.2. The final rule as produced by the secretary of state shall be sent to the agency for review and proofing. The agency may have up to ten (10) working days to review the final rule and return any corrections or a statement of confirmation.

8.8.3. Following confirmation or corrections, as the case may be, the secretary of state shall final file the proposed rule and include in in the official West Virginia Code of State Rules.

8.8.4. 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.

§153-6-9. Filing of emergency rules.

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

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

9.1.2. The agency shall attach the proper notice.

9.2. Filing a new series rule as an emergency rule

9.2.1. The agency shall file the entire rule with proper notice.

9.3. Filing of amendments to an emergency rule.

9.3.1. When amending an emergency rule which was initially filed as amendments to an existing series as in subsection 9.1, 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.

9.3.2. 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.

§153-6-10. Tables, charts, diagrams, etc.

10.1. 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 3.3.

10.2. 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.

10.3. 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.

§153-6-11. Effective dates.

11.1. 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. After the effect date of this rule, the following procedure will be utilized.

11.1.1. 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.

11.1.2. 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.

§153-6-12. Publication of materials from the State

Register.

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

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

12.2.1. The West Virginia Code of State Rules

b. The West Virginia Register

c. The Open Meeting File

d. The Orders File

e. Other Agency Action File

f. Obsolete File

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

12.3.1. The WVCSR shall be the official compilation of state agency regulations currently in effect, excluding emergency rules.

12.3.2. The WVCSR shall be supplemented 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 those 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.

12.3.3. The secretary of state may contract for publication and maintenance of the WVCSR, or parts thereof, but the secretary of state shall be responsible for the codification and validity of all state agency regulations filed by state agencies for inclusion in the WVCSR.

12.3.4. The secretary of state may offer parts of the WVCSR with a supplement service.

12.3.5. The WVCSR shall be a looseleaf publication available at a cost established by the secretary of state to defray the expense of publication and maintenance.

12.3.6. Parts of the WVCSR may be available through duplication or other means at a cost to defray the expense to the secretary of state.

12.4. The West Virginia Register (WVR).

12.4.1. The WVR shall be a weekly publication of notices and other announcements filed relating to rule-making, open meetings, orders and other actions by state agencies.

12.4.2. 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.

12.5. The Open Meetings File (OMF).

12.5.1. The OMF shall consist of notices filed by agencies for open governmental proceedings under section nine (a), chapter six of the West Virginia Code.

12.5.2. Notices which are filed and found to be in violation of the notice requirements of article nine (a), chapter six of the West Virginia Code shall be published, but shall indicate noncompliance. A copy of this finding and the reasons for noncompliance shall be sent to the agency affected.

12.6. The Orders File (OF).

12.6.1. The OF shall consist of Orders issued by state agencies following contested case hearings and required to be filed pursuant to article nine, section two, chapter twenty-nine (a) of the West Virginia Code.

12.6.2. The secretary of state may amend these rules to establish a standard form, format and procedure for filing orders.

12.7. Other Agency Action File (OAAF)

12.7.1. OAAF shall consist of all other information required to be filed by statute, rule or agency directive or practice. Notice of such filings shall be included in the WVR.

12.7.2. The secretary of state may require by amendment to these rules other filings of agency actions in the State Register.

12.8. Obsolete File.

12.8.1. The OF shall consist of obsolete rules of state agencies. The secretary of state shall be responsible for certifying the time period during which obsolete rules were in effect.

TABLE 153-6 A

TEXT BREAKDOWN

153CSR	Title
153CSR6	Series
153CSR6.1	Section
153CSR6.1.1.	Subsection
153CSR6.1.1.a.	Paragraph
153CSR6.1.1.a.A.	Subparagraph
153CSR6.1.1.a.A.(a)	Part
153CSR6.1.1.a.A.(a)(A)	Subpart
153CSR6.1.1.a.A.(a)(A)1.	Item
153CSR6.1.1.a.A.(a)(A)1.(1)	Subitem

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Standard Size and Format for Rules and Procedures
for Publication of the State Register or Parts...

Type of Rule: XXX Legislative Interpretive Procedural

Agency Secretary of State Address State Capitol
Charleston, WV 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ 0	\$ 0	\$ 0	\$0	\$ 0
Personal Services	0	0	0	0	0
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates:

No effect on agency or affected groups' budgets

3. Objectives of these rules:

Establish a standard size and format in light of the Administrative Law Division placing all rules into computer and publishing the West Virginia Code of State Rules.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries;
Specific groups of citizens.

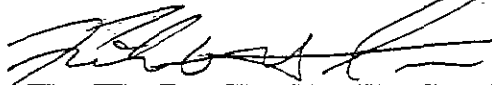
None

C. Economic Impact on Citizens/Public at Large.

None

Date: Aug. 17, 1987

Signature of Agency Head or Authorized Representative



Rich O. Hartman, Dir. Admin. Law Div

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

BARBARA STARCHER
Deputy Secretary of State

RICHARD S. STEPHENSON
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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

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Director, Administrative Law

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Director, Corporations

VIRGINIA SKEEN
Special Assistant

(Plus all the volunteer
help we can get)

August 17, 1987

REPORT ON PUBLIC HEARING

On August 17, 1987, a public hearing was held in the Secretary of State's Office at 1:00 p.m. on the proposed rule Series 6 titled "Standard Size and Format for Rules and Procedures for Publication of the State Register or Parts of the State Register."

Attendance: Rich O. Hartman, Director Administrative Law Div.
Judy Cooper, Administrative Assistant
Kay Howard, Director, Regulatory Services
Health Department
Department of Natural Resources --
Written Comments Mailed

Comments mailed by DNR adopted.

No other comments presented. Public hearing closed at 1:15 p.m.

A handwritten signature in cursive script, appearing to read "Rich O. Hartman", written over a horizontal line.

RICH O. HARTMAN, DIRECTOR



STATE OF WEST VIRGINIA
DEPARTMENT OF NATURAL RESOURCES
CHARLESTON 25305

ARCH A. MOORE, JR.
Governor

August 14, 1987

RONALD R. POTESTA
Director

ROBERT K. PARSONS
Deputy Director

Mr. Rich O. Hartman, Director
Administrative Law Division
West Virginia Secretary of State
State Capitol
Charleston, WV 25305

RE: Comments on Proposed Rules
(Title 153, Series 6)

Dear Rich,

The Department of Natural Resources wishes to submit the following comments on the proposed rules of the Secretary of State entitled "Standard Size and Format for Rules and Procedures for Publication of the State Register or Parts of the State Register," Title 153, Series 6.

Section
Number

Comment

-
- 1.2. "WV Code" should read "W. Va. Code"
- 2.2. "...on the left; right, top..." should read "...on the left, right, top..."
- 3.3. The Department suggests that this subsection be revised to allow an agency to utilize a different text breakdown upon written request to the Secretary of State. The Department of Natural Resources has attempted to standardize its regulations during the past fourteen months to the following text breakdown system, which was approved by your office: Section 1.1.1.a.1.A.i.1.a. To now mandate a different system would impose an unnecessary burden upon the Department, particular given the extreme length and large number of internal citations in some DNR regulations.
4. "Underling" should read "Underlining"

Rich Hartman
August 14, 1987
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Section Number	Comment
4.3.a.	Under the Text Breakdown at the end of this proposal, this subsection should read "4.3.a." rather than "a." Subsequent subsections should also follow the breakdown.
4.3.a.	"...subsections of of text..." should read "...subsections of text"
4.3.a.	"The agency shall..." should read "The agency shall..."
4.3.a.	The procedure envisioned by this subsection will produce confusion due to the appearance of two sets of text in a proposed rule bearing the same section or subsection numbers -- the old text to be deleted and the new text to be added. The Department suggests that Section 4.3.a. of this proposal be revised to include instructions concerning the denotation of new or replacement text.
7.1.a.	Under W. Va. Code §29A-3-11, when an agency approves a proposed legislative rule, the agency must submit the <u>full text</u> of that rule to the Legislative Rule-Making Review Committee. In light of this requirement, the Department suggests that Section 7.1.a. of the proposal be revised as follows: <u>"The agency may either file only those sections or subsections to be amended or added to the existing rule series or file the entire rule including amendments or additions."</u>
7.2.a.	"...agency shall file the notice of agency approval..." should read "...agency shall file <u>only</u> the notice of agency approval..."
7.4.	"...LRMRC objections." should read "Legislative Rule-Making Review Committee (LRMRC) objections."

Rich Hartman
August 14, 1987
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Section Number	Comment
8.5.	"...adopted, interpretive..." should read "...adopted interpretive..."
8.5. - 8.8.	These subsections are incorrectly labeled "4.5.", "4.6.", "4.7.", and "4.8."
9.5.	"...section nine..." should read "...article nine..."
12.6.	"filed" should read "file"
12.7.a.	The subsection designation is missing and "WVr" should read "WVR"

If you have any questions regarding these comments, please call me at 348-2761.

Very truly yours,



Dennis H. Treacy
Special Assistant to the Director

DHT/jht

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

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Special Assistant

(Plus all the volunteer
help we can get)

August 17, 1987

This rule is required due to all rules being placed in computer. This resulted in the need to alter our format and procedures to meet the computer program used to publish the West Virginia Code of State Rules. Also, procedures for publication of materials for the State Register are set in regulation so that future administrations cannot make changes without review by the LRMRC.

A handwritten signature in black ink, appearing to read "Rich O. Hartman", written over a horizontal line.

RICH. O. HARTMAN

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Secretary of State
Subject: Standard size and Format for Rules and
Procedures for Publication of the State Register
or Parts of the State Register

PERTINENT DATES

Filed for public comment: July 16, 1987
Public comment period ended: August 17, 1987
Filed following public comment period: August 17, 1987
Filed LRMRC: August 17, 1987
Filed as emergency:

Fiscal Impact: None

ABSTRACT

Section 1 is a general section providing the scope, authority, filing date and effective date of the proposed rule. Also, it states that the proposed rule repeals and replaces W.Va. 153 CSR 6.

Section 2 relates to the standard size of rules and related documents.

Section 3 relates to numbering and indentation. It requires that all agencies have title and series numbers assigned by the Secretary of State.

Section 4 relates to underlining, strike-throughs and capitalization. It specifies that there shall be no underlining of text except to indicate new language to be added. It also allows an agency which wishes to delete an entire section or sections of text involving numerous pages to omit the sections entirely and not show underlining.

Section 5 relates to repeal and replacement. It allows an agency which proposes major changes to an existing rule, involving a majority of the sections, to repeal the rule and replace the rule as a new rule, eliminating the need for strike-throughs and underlining. In this case, a repealer clause is to be included in the general section.

Section 6 relates to incorporation by reference and requires that such documents be filed at the time the proposed rule is filed. Documents of less than twenty pages must be set out in their entirety within the proposed rule. Certain specified documents are exempted from the filing requirements.

Section 7 specifies what must be filed during the various stages of the rule making process for proposed amendments to an existing series.

Section 8 relates to the filing of a proposed new series rule. It specifies what must be filed during the various stages of the rule-making process.

Section 9 relates to the filing of emergency rules. It specifies what must be filed and states that the amendment of an emergency rule will not result in any additional time to the life span of the initially filed emergency rule.

Section 10 relates to tables, charts, diagrams, etc., and requires that unless exempted by the Secretary of State an agency must attach all tables, charts and diagrams at the back of the proposal with reference made thereto in the text.

Section 11 relates to effective dates and states that the effective date of the general section shall remain unless the rule is repealed and replaced. The effective dates for amendments to sections of an existing rule are to be noted at the section heading of the section amended.

Section 12 relates to publication of materials from the state register. It specifies that the state register consists of the following parts: The West Virginia Code of State Rules, The West Virginia Register, The Open Meeting File, The Orders File, Other Agency Action File and the Obsolete File. Various parts are described and provision is made for publication and maintenance of the various parts.

Table 153-6 A specifies the manner for numbering sections of the text.

AUTHORITY

Statutory authority: W.Va. Code, §29A-2-6(c) and §29A-2-7(i)

W.Va. Code,, §29A-2-6(c) provides, in part as follows:

(c) The Secretary of State shall prescribe by legislative rule a standard size, format, numbering and indexing for rules to be filed in the state register and he may prescribe such procedural or interpretive rules as he deems advisable to clarify and interpret the provisions of this section....

W. Va. Code, §29A-2-7(i) provides as follows:

The secretary of state may propose changes to the procedures outlined as the section above by proposing a legislative rule under the provisions of section nine, article three [chapter twenty-nine-a], but may promulgate no rules containing such changes unless authorized by the legislature pursuant to article three [chapter twenty-nine-a].

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No. As stated above the Secretary of State has the authority to prescribe standard size, format, numbering and indexing for rules.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

Yes.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Section 7.1.1 would allow an agency to file only those sections or subsections to be amended or added to the existing rule series. W.Va. Code, §§ 29A-3-4, 5, 9 and 11 all require that when a rule is being proposed, whether it be a legislative, procedural, interpretive or emergency rule that "the text of the rule" be filed with the Secretary of State. It is the Committee's interpretation that the statute intends that the entire series or text of the rule be filed. Unless the complete series is provided, the public does not have complete notice as to the effect of the proposed amendment when it is taken out of context.

Section 4.3.1 allows an agency wishing to delete an entire section or sections of text to merely delete the sections and not show the stricken language. W.Va. Code, §29A-3-11, requires that proposed legislative rules submitted to the Legislature must have new language underlined and "language to be deleted from any existing rule stricken through but clearly legible". Clearly, in order to comply with the statute, an agency may not merely delete sections without showing strike throughs when filing its proposed rule with the Committee. The theory behind the requirement being that it is impossible to tell what has been deleted unless you can see the language. It would seem that the public, prior to commenting on the rule, should have the same opportunity. Also, it would seem that it would be easier for the agency to prepare its proposed rule to comply with the statute and not also file a different version with the Secretary of State.

Section 5.1 of the proposed rule allows an agency proposing major changes to eliminate strike-throughs and underlining by using a repealer clause. Again, there is no such exemption in Section 11 for submission of legislative rules to the Rule Making Review Committee. It seems obvious that the agency should not be required to do two types of filing. Also, where a complete rule is being rewritten it is still important that the public have notice of the present rule and the proposed changes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

No. As stated in IV above, agencies are being given different requirements for filing the same rule. There should be only one set of requirements for documents and they should be the statutory requirements.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

No. W.Va. Code,, §29A-3-11, requires "full text of the legislative rule as finally approved by the agency with new language underlined and with language to be deleted from an existing rule stricken through but clearly legible". The proposed rule is amending an existing rule and does not show strike-throughs and underlining. Also, the filing did not contain a brief summary of the content of the legislative rule.

VIII. OTHER.

Section 7.4.1. and 7.4.2 allow agencies to file committee recommended modifications on separate sheets and require that the filing be no later than the twentieth day of the legislative session. Again, the rule differs from Committee policy and makes it difficult for agencies to know what they need for compliance. Because the rule is submitted to the Legislature as a modified rule, the Committee requires a refiling of the entire rule with modifications incorporated. The Committee is also requiring that all committee approved modifications be made and the proposed rule refiled within ten days of the committee meeting at which the modification was approved. Allowing agencies to file up to the twentieth day of the legislative session is totally unworkable because the date on which the modified rule is filed with the Secretary of State must be included in the bill of authorization, which must be submitted to the Legislature by the twentieth day of the legislative session. These bills are time consuming to prepare and due to work load must be ready for submission prior to the legislative session.

The proposed rule seems to be using the word "rule" but at least in one instance uses the term "regulation". For consistency sake, the same term should be used throughout.