

**WEST VIRGINIA  
SECRETARY OF STATE  
BETTY IRELAND  
ADMINISTRATIVE LAW DIVISION**

Form #2

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OFFICE OF THE SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: Secretary of State's Office TITLE NUMBER: 153

RULE TYPE: Procedural CITE AUTHORITY: §46-9-516

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 36

TITLE OF RULE BEING PROPOSED: Contested Case Hearings For Uniform Commercial Code

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON November 24, 2006 AT 11:30 AM ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Vicki Haught, Manager  
UCC/Process Division  
Secretary of State's Office  
1900 Kanawha Blvd. East  
Charleston WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

  
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

#3.60

153CSR36

October 24, 2006

This rule lays out the hearing procedures and time table for administrative hearings having to do with fraudulent filings of financial statements for Uniform Commercial Code §46-9-516(e)

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: 153

Type of Rule:  Legislative  Interpretive  Procedural

Agency: Secretary of State's Office

Address: UCC/Process Division  
1900 Kanawha Blvd E  
Charleston WV 25305

Phone Number: 558-6000 Email: vhaught@wvsos.com

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

This rule is to clarify an amendment adding language to §46-9-516 (e) on fraudulent filings. This gives the Secretary of State's Office the right to reject filings that appear to be fraudulent. There should be little if any impact on revenues.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: \_\_\_\_\_

Rule Title: 153

3. **Explanation of above estimates (including long-range effect):**  
Please include any increase or decrease in fees in your estimated total revenues.

**MEMORANDUM**

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: 10/24/2006

Signature of Agency Head or Authorized Representative

*Patty J. Sullivan*

**TITLE 153  
PROCEDURAL RULE  
SECRETARY OF STATE**

**SERIES 36  
RULES OF PROCEDURE FOR CONTESTED CASE HEARINGS RELATED TO  
Uniform Commercial Code**

**§153-36-1. General.**

1.1. Scope. -- These procedural rules establish the general procedures for conducting contested case hearings related to Uniform Commercial Code filings by the Secretary of State.

1.2. Authority. -- § 46-9-516

1.3. Filing Date. --

1.4. Effective Date. --

**§153-36-2. Request For Hearing Following Denial Of UCC filings**

2.1. Any individual or firm who has had a filing refused may request a hearing.

2.2. The request shall be in writing and shall specify the reasons for the request and the relief sought.

2.3. Requests for a hearing following denial of filings must be received by the Secretary of State within fifteen (15) days from the date the applicant receives the denial letter as indicated by the return receipt.

2.4. The Secretary of State may deny a hearing under this section if the request is received after the fifteen (15) day period.

2.5. Receipt of a request for a hearing by the Secretary of State shall begin the hearing process.

2.6. The requested hearing shall be held within forty-five (45) days from the receipt of the request by the Secretary of State.

2.7. A notice of the hearing shall be served upon the party requesting the hearing at least thirty (30) days prior to the hearing and shall be delivered by certified mail return receipt requested.

**§153-36-3. Reapplication Following Denial Of filing.**

3.1. The Secretary of State shall not accept any refiling unless the applicant can clearly demonstrate or document corrections or compliance with the conditions or terms which caused the denial of the initial filing.

**§153-36-4 Conduct Of Hearings.**

4.1. Any party shall have the right to be represented by an attorney-at-law, duly qualified to practice in the State of West Virginia.

4.2. The Secretary of State may be represented by the office of the Attorney General.

4.3. The rules of evidence as applied in civil cases in the circuit court of this State shall be followed.

4.4. When necessary to ascertain facts not reasonably susceptible to proof under said rules of evidence, evidence not admissible thereunder shall be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.

4.5. The agency shall be bound by the rules of privilege recognized by law.

4.6. Documentary evidence may be received in the form of copies or excerpts or by incorporation of reference.

4.7. Initially the agency shall be given opportunity to present evidence, including testimony, papers, records, agency staff memoranda and documents in the possession of the agency in support of its position.

4.8. Every party shall have the right of cross-examination of witnesses who testify, and following the conclusion of the agency's presentation, shall have the right to submit rebuttal evidence.

4.9. The Secretary of State shall have the right to cross-examine witnesses providing rebuttal testimony.

4.10. Following the presentation of all the evidence, every party, including the Secretary of State, shall have the right to offer argument, not to exceed a reasonable time limit as determined by the Secretary or the hearing examiner.

#### **§153-36-5. Continuation Or Delay Of Hearing.**

5.1. Hearings may be continued or delayed by request of any party to the Secretary of State or at the request of the Secretary of State.

5.2. Each party, including the Secretary of State, shall be permitted only one (1) motion to continue or delay a hearing.

5.3. Any continuance or delay shall not exceed fifteen (15) days from the last scheduled date of the hearing.

5.4. A motion to continue or delay must be received by all parties affected at least five (5) days prior to the date of the hearing that is to be continued or delayed.

#### **§153-36-6. Transcription Of Reported Testimony And Evidence.**

6.1. What reported. -- All testimony, evidence, arguments and rulings on the admissibility of testimony and evidence shall be reported by stenographic notes and characters or by mechanical means.

6.2. Request from any party. -- Upon the request to the Secretary from any party to the hearing, all reported materials shall be transcribed and a copy thereof furnished to such party at the requesting party's expense.

6.3. Transcription in the event a hearing examiner is appointed. -- In all cases where a hearing examiner

is appointed, all reported material shall be transcribed and forwarded to the Secretary. Any parties requesting a copy of a transcript prepared pursuant to this subsection shall be furnished a copy at their expense.

6.4. Responsibility for transcript. -- The Secretary shall have the responsibility for making arrangements for the transcription of the reported testimony and evidence. In the event transcription is required pursuant to this section it shall be accomplished with all dispatch.

6.5. Correction of error in transcript. -- Upon the motion of the Secretary of any party assigning error or omission in any part of any transcript, the Secretary or his duly appointed hearing examiner shall settle all differences arising as to whether such transcript truly discloses what occurred at the hearing and shall direct that the transcript be corrected and revised in the respects designated, so as to make it conform to the whole truth.

**§153-36-7. Submission Of Proposed Findings Of Fact And Conclusions Of Law; Time For Submission.**

Any party may submit to the Secretary proposed findings of fact and conclusions of law within thirty (30) days of the conclusion of a hearing or, in the event the proceedings of a hearing are transcribed, within twenty (20) days from the date the final transcript is available.

**§153-36-8. Appointment Of Hearing Examiner; Function Of Hearing Examiner.**

The Secretary may, in his discretion, appoint a hearing examiner who shall be empowered to subpoena witnesses and documents, administer oaths and affirmations, to examine witnesses under oath, to rule on evidentiary questions, to hold conferences for the settlement or simplification of issues by consent of the parties and to otherwise conduct hearings as provided in Section 5 of these rules.

**§153-36-9. Conferences; Informal Disposition Of Cases.**

At any time prior to the hearing or thereafter, the Secretary or his duly appointed hearing examiner may hold conferences:

- (a) To dispose of procedural request or similar matters;
- (b) To simplify or settle issues by consent of the parties; or
- (c) To provide for the informal disposition of cases by stipulation, agreed settlement or consent order.

The Secretary or his duly appointed hearing examiner may cause such conferences to be held on his own motion or by the request of a party.

**§153-36-10. Depositions Permitted.**

Evidentiary depositions may be taken and read into evidence as in civil actions in the circuit courts of this State.

**§153-36-11. Subpoenas.**

11.1. Where permitted. -- In accordance with any provision contained in W. Va. Code §§30-1-1 and 30-

18-1, as amended, authorizing the Secretary to issue subpoenas or subpoenas duces tecum, the Secretary or his duly appointed hearing examiner shall have the power to issue subpoenas or subpoenas duces tecum pursuant to the provisions set forth in W. Va. Code §29A-5-1b.

11.2. Time for requesting the issuance of subpoenas. -- Written requests for the issuance of subpoenas or subpoenas duces tecum as provided in Subsection 12.1 of this section shall be made no later than ten (10) days prior to a scheduled hearing.

**§153-36-12. Orders; Content.**

Every final order entered by the Secretary, following a hearing conducted pursuant to these rules, shall be made pursuant to the provisions of W. Va. Code 29A-5-9a. Such orders shall be entered within forty-five (45) days following the submission of all documents and materials necessary for the proper disposition of the case, including transcripts and proposed findings of fact and conclusions of law.

**§153-36-13. Appeal.**

An appeal from any final order or ruling entered in accordance with these regulations shall be in accordance with the provisions of W. Va. Code §29A-5-4.

**§153-36-14. Severability.**

If any provision of these rules or the application thereof to any person or circumstance shall be held invalid, such invalidity thereof shall not affect the provision or application of these regulations which can be given effect without the invalid provision or application and to this end the provisions of these regulations are declared to be severable.