

Public Service Commission

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September 28, 2017

Maureen Lewis
WV Secretary of State's Office
Building 1, Suite 157K
State Capitol Complex
Charleston, WV 25305

Re: Comments from the Public Service Commission of West Virginia to the West Virginia Secretary of State Regarding Proposed Procedural Rule 153 C.S.R. Series 1.

Dear Ms. Lewis,

Thank you for this opportunity to provide comments regarding proposed changes to title 153 C.S.R. Series 1.

The Public Service Commission of West Virginia (Commission) files an average of one or two proposed rulemakings every year. For the most part, Commission rulemakings are exempt from Legislative rule review. W.Va. Code §29A-1-3 and 153-6-2.5.

We note that several rules in this proposed rulemaking overlap with, and sometimes contradict, existing rules in title 153 C.S.R. Series 6, "Standard Size and Format for Rules and Procedures for Publication of the State Register or Parts of the State Register." In our comments regarding specific changes we have indicated where we believe it would be helpful to state that series 153-1 supersedes series 153-6. However, 153-6-9 ("Filing Proposed Amendments To An Existing Series"), 153-6-10 ("Filing Of A Proposed New Series Rule"), and 153-6-11 ("Filing of Emergency Rules"), cover a lot of ground. It would be helpful if series 153-1 clearly stated where it supersedes portions of series 153-6. In the alternative, series 153-6 could be modified to conform to series 153-1.

Series 153-1 does not address tables, charts, and diagrams, although those items are addressed in 153-6-12. Almost all Commission rules include numerous forms that are used by public utilities in making regulatory filings with the Commission. It appears that

the forms should be treated as tables, charts, or diagrams, as described in 153-6-12. It would be helpful if series 153-1 would specifically reference the appropriate treatment.

Additionally, the Commission recommends the addition of language in series 153-1 stating that it supersedes 153-6-14 regarding Electronic Filing.

Comments regarding specific rules:

§153-1-2. Definitions.

153-1-2.5, 153-1-2.6, and 153-1-2.9, reference the “individual” who has been granted authority to take certain actions on behalf of the agency head regarding reviewing, editing, and printing rules (2.5), adding fiscal notes (2.6), and electronic submission (2.9).

The Commission has authorized and trained several individuals to carry out the above functions to accommodate absences from work. The Commission recommends changing “individual” to “individual(s)” to accommodate the need for multiple individuals being authorized to perform these tasks.

§153-1-4. Procedures for rule filing.

153-1-4. This section contains specific detail for navigating the Secretary of State’s website to file eRules. Although this information is helpful, it may reduce flexibility of the website. For example, 153-1-4.3, -4.4, -4.5 (flush), -4.6, -4.7, -4.8 (all), -4.9, -4.10, -4.11, and -4.14 (all), constitute instructions on how to use the webpage.

Instructions on how to use the website should be placed on the website itself. Doing so will allow for greater flexibility in the event that technological change requires modification of the website interface.

153-1-4.8 describes how to file the forms that must accompany a rule filing. This rule should state that it supersedes the requirements of 153-6-4, regarding the filing of forms.

§153-1-5. Required formatting.

153-1-5.1 The Commission recommends rewriting 153-1-5.1 to replace the inch notation (“”) with the word “inch.” 153-1-5.1 should also acknowledge that it supersedes the margin rules found in 153-6-3.2.

5.1. Margins shall be set at 0.5 inch for the top and bottom, and 1 inch for the left and right. This rule supersedes the margin rules found in 153 C.S.R. 6.3.2.

153-1-5.4, 153-1-5.5.3, and 153-1-5.6.2 refer to a font size, but do not include whether font size is based on pixels, points, or some other measure. Microsoft Word measures font size in “points” and that should be included in the rule description, such as

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

153-1-5.7 requires tab stops to be set at .25 spaces. The rule should specify that it means “.25 inch spaces.”

153-1-5.9.2 incorrectly depicts the appropriate formatting of headings. The extraneous spaces and the period after the “(Space space)” should be removed. The Commission recommends the rule be depicted as follows:

§[title #]-[series #]-[section #].[2 spaces]Name of section.

153-1-5.10 describes the allowable content of the first section of every rule. 153-1-5.10 does not prohibit or authorize the inclusion of any additional content. If the Secretary of State intends to limit Section 1 to only those provisions listed in 153-1-5.10, then the content should be appended with the sentence, “No additional information may appear in section 1.” If the Secretary of State does not intend to limit section 1 to only the listed provisions, then the content should be appended with the sentence, “The Agency may add appropriate provisions to this section, but may not include definitions within section 1.”

153-1-5.10 discusses the sunset provision, incorrectly referencing 153-1-5.11.3. The reference should be to 153-1-5.10.3.

153-1-5.10.1 attempts to show the exact spacing of the entries, but contains extraneous spaces. Additionally, it uses the word “space” to indicate the distance between two words on a single line, and uses “double space” to indicate placing a blank line prior to the next line of text. Because adherence to the formatting is critically important, the examples should be very clear. The Commission recommends rewriting Rule 5.10.1.b. as follows:

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

153-1-5.10.2 addresses dates. This rule should state that it supersedes the treatment of dates in 153-6-13.

153-1-5.10.2.b states that “The effective date of the rule can be the same date a legislative rule is final filed up to 90 days later.” The meaning of this is not clear. The Commission recommends:

5.10.2.b. The effective date of the rule can be the same date a legislative rule is final filed or 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 final filing. This date cannot be backdated and is not the same as any authorizing bill dates.

153-1-5.10.3 requires that all Legislative rules, except for those specifically exempted, include a sunset provision numbered as 1.5 in the General section. It may be beneficial to require that if 1.5 is not used to contain a sunset provision, it be shown as:

1.5. [Reserved.]

153-1-5.13 prohibits the use of the “track changes” feature to be used in rules filed with the Secretary of State. For the sake of clarity, the Commission recommends that the rule read as follows:

5.13. All “track changes” tracking information must be removed from rules before they are filed. It is the responsibility of the filing Agency to remove all “track changes” tracking information from the document prior to filing.

153-1-5.14 prohibits capitalization except for proper names, first words in a sentence, or routinely capitalized abbreviations. It would be helpful to allow capitalization for defined words. The Commission uses many defined “terms of art” in its regulation of public utilities. Capitalization of these specialized words would signal to the reader that the word has a significant meaning. The Commission recommends modifying 153-1-5.14 as follows:

5.14. Capitalization must be reserved for proper names, the first word in a sentence, abbreviations that are routinely capitalized and words defined by the rule. Do not capitalize for emphasis.

153-1-5.15 regarding repeal and replacement of a rule, should state that it supersedes 153-6-7, if that is the intent of the Secretary of State.

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153-1-5.21 describes the outline format for use in rules. The rule should state that only Arabic numerals (as opposed to Roman numerals) may be used. It would be helpful to make sure the examples maintain a consistent description of the content, with a full description of each “layer” of the format identification. For example, the Commission recommends rewriting 153-1-5.21.10 as shown below. (Additionally, 153-1-5.21.10 as written in the proposed rule incorrectly states that a capital letter is followed by a parenthetical lower case letter.)

5.21.10. Subitem breakdown shall be indented 9 times and include the heading number, section number, subsection number, subdivision lower case letter, paragraph number, subparagraph capital letter, part number, subpart parenthetical lower case letter, item parenthetical number, subitem parenthetical capital letter, with a period placed between each number and letter, but without periods between parentheticals.

153-1-15.21 should also state that it supersedes the numbering instructions contained in 153-6-5.

Thank you again for this opportunity to submit comments regarding proposed changes to 153 C.S.R. 1. The Public Service Commission looks forward to working with your office in the future. Please let us know if you have any questions about these comments or if we can be of any further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard E. Hitt". The signature is fluid and cursive, with a large initial "R" and a distinct "H".

Richard E. Hitt
General Counsel

October 2, 2017

Response to Comments Received 9/28/2017 from Richard Hitt of the PSC

With regards to the request to state that 153CSR1 supersedes 153CSR6, this statement is not true. 153CSR1 is a procedural rule which does not carry the weight of law. 153CSR6 is a legislative rule which has been approved by the Legislature and is law. According to W. Va. Code §29A-2-6(c), “the Secretary of State may prescribe procedural or interpretive rules to clarify and interpret the provisions in this section.” The intent of 153CSR1 is to offer some explanation and guidance in using the eRules application while more substantive changes are being worked on to 153CSR6 with the expectation to have those changes ready for legislative review for the 2019 legislative session. For the eRules application to work properly, it is necessary for all agencies to comply with consistent formatting styles. In addition, W. Va. Code §29A-2-6(e)(1) states, “Beginning July 1, 2011, unless otherwise authorized by the Secretary of State, all agencies, boards and commissions having rulemaking authority, shall file the provisions of and attachments to all proposed rules required to be filed with the Secretary of State, and any associated documents that are required to be published in the State Register, exclusively in a electronic format.”

With regards to the comment that 153-1 does not address tables, charts and diagrams; that was an oversight. Based on this comment, language has been added to the rule as 4.5.7.a. and 5.21.

With regards to changing individual to individual(s) when describing the authority granted to users of the eRules application; that is a good idea. Changes have been made in section 2.5., 2.6. and 2.9 of the rule.

With regards to the comment that the section containing specific detail for navigating the Secretary of State’s website to file eRules could be placed as instructions on the website itself; the Administrative Law Division prefers to keep this information in a procedural rule. No changes will be made based on this comment.

With regards to the comment that the inch (”) notation should be replaced with the word “inch”, that font size should be referred to as “points” and that tab spacing should specify .25 inch; these are small details that do not change the intent or meaning of the rule. To be consistent with style used in the W. Va. Code, changes will be made in §§ 5.1. and 5.7. of the rule adding the word inch. No change will be made to text size of the rule (adding the word

“point), because Microsoft Word is not the only accepted word processing program used to file rules, WordPerfect is accepted as well.

With regards to the comment that the wording in §5.9.2 of the rule should be changed from “space space” to “2 spaces”; this change has been made.

With regards to the comment regarding the content of the General section of a rule, specifically §5.10. of the rule; language has been added for clarity.

With regards to the comment regarding an incorrect reference within the rule to the sunset provision information; this has been corrected.

With regards to the comment regarding changing the use of the words “double space” to “2 line returns”; this is a small style preference that does not change the intent or meaning of the rule. This change has been made throughout 5.10.1 of the rule.

With regards to clarifying language in 5.10.2.b. of the rule about effective dates of rules after final filing; this change has been made.

With regards to the comment that adding “1.5. (reserved.) would be beneficial to rules that are not using 1.5. as the sunset provision; no changes will be made to the rule. For all legislative rules that require a sunset provision, 1.5. must be used. In addition, the W. Va. Code does not provide for 1.5. to state “reserved”. There are no exceptions.

With regards to the comment about §5.13. of the rule “track changes”; no changes will be made to the rule.

With regards to the comment about §5.14. of the rule about using capitalization; this change has been made.

With regards to the comment regarding repeal and replacement of a rule; no changes will be made to the rule.

With regards to the comment about the description of the outline format used for breakdown information in a rule; no changes will be made to the rule. The Administrative Law Division thinks it is clear that Roman numerals could not be used based on the example given. In addition, each breakdown is named in the table, it is not necessary to label each one in the written description. This would make the description excessively burdensome to the reader.