



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Auditor TITLE-SERIES: 155-10
RULE TYPE: Procedural Amendment to Existing Rule: No Repeal of existing rule: No
RULE NAME: RULES FOR ELECTRONIC FILING OF
FORFEITURE DATA FOR LAW ENFORCEMENT
AGENCIES

CITE STATUTORY AUTHORITY: 60A-7-708(c)

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 07/27/2022 4:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Skylar Wotring
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Charleston, WV 25305
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PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

This rule details procedures and required formatting for filing data with the State Auditor concerning forfeiture of property by West Virginia law enforcement agencies.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

In 2020, the State Legislature passed accountability and transparency standards for law enforcement to provide information to the public concerning the seizure and forfeiture of money and tangible goods used in connection with the distribution of controlled substances. The Auditor is the repository for that information. This rule standardizes how that information is to be transmitted to the Auditor.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

None

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

None

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

None

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2022 Increase/Decrease (use "-")	2023 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

N/A

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Stephen R Connolly -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 155
PROCEDURAL RULE
STATE AUDITOR

SERIES 10
RULES FOR ELECTRONIC FILING OF FORFEITURE DATA
FOR LAW ENFORCEMENT AGENCIES

§155-10-1. General.

1.1. Scope. -- This rule details procedures and required formatting for filing data with the State Auditor concerning forfeiture of property by West Virginia law enforcement agencies.

1.2. Authority. -- W. Va. Code §60A-7-708(c); 29A-2-6(c).

1.3. Filing Date. --

1.4. Effective Date. --

§155-10-2. Applicability.

2.1. This procedural rule applies to all law enforcement agencies located in the State of West Virginia that are authorized to initiate criminal, civil or administrative forfeiture pursuant to the “West Virginia Contraband Forfeiture Act” (W.Va. Code §60A-7-701 *et seq.*).

§155-10-3. Definitions.

3.1. “AA” means access account.

3.2. “Act” means the West Virginia Contraband Forfeiture Act contained in Article 7, Chapter 60A of the Code of West Virginia.

3.3. “Agency” means any state, county, municipal or other law enforcement agency authorized to initiate criminal, civil or administrative forfeiture proceedings pursuant to the Act.

3.4. “Agency head” means the chief executive, Mayor, Chief of Police, Sheriff, or top administrator for any agency who has the authority to forfeit property pursuant to the Act.

3.5. “Attestation” means a legal document binding the agency to the data that is submitted.

3.6. “Auditor” means the West Virginia State Auditor.

3.7. “Citizen Services” means the portal for the electronic forfeiture data filing form needed to report.

3.8. “ESAC” means equitable sharing agreement and certification

3.9. “Submission” means a level of access granted by the agency head that gives an individual(s) permission to file forfeiture data electronically on behalf of the agency.

3.10. "Task Force" means a group of more than one law enforcement agencies authorized to initiate criminal, civil or administrative forfeiture proceedings pursuant to the Act.

3.11. "User" means the individual(s) who has been granted authority by the agency head to review, edit and submit electronic forfeiture data to the Auditor.

3.12. "WVSAO" means West Virginia State Auditor's Office

§155-10-4. Prior to filing forfeiture data.

4.1. An Access Account must be created.

4.1.1. Go to the Auditor's WVSAO website, select the "Budget Analysis" tab then click link at bottom of page to be directed to Citizen Services to create Access Account.

4.1.2. Verify the user name and complete the account setup

4.1.2.a. User names will be saved in the application.

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

4.2. The agency head will list the specific agency that authority is being granted for. In citizen services, agency head will add name to grant authority on behalf of the agency with his/her name, whether it be an individual agency or task force.

4.2.1 If any changes need to be made to a submitted document it is the responsibility of the user to notify the State Auditor's Office, so that their submission shall be updated.

4.2.2. Upon completion of the AA, a notification email will be sent for electronic filing so submitting forfeiture data may begin.

4.3. If a user, submission user, or agency head leaves the employment of the agency, a signed statement from the agency must be filed with Auditor staff in order to modify permissions for that individual in the application.

§155-10-5. Procedures for electronic forfeiture data filing.

5.1. Go to the WVSAO website and select "Budget Analysis", then scroll to bottom of page to find "Law Enforcement Forfeiture and Seizure Reporting"

5.2. Click link to be taken to the online portal, then log-in using an AA.

5.2.1. At the bottom of the page, click the blue "Select" button to begin report.

5.2.1.a. Multiple reports are completed in Citizen Services portal, including:

5.2.1.b. Agency Information Report

5.2.1.c. Statement of Seizures and Forfeitures Report

5.2.1.d. Statement of Expenses from Seizures and Forfeitures Report

5.2.1.e. Statement of Total Assets Report

5.2.1.f. A copy of the Agency's ESAC

5.2.1.g. A digitally signed attestation form on the last module of the portal

5.2.2. All data and information is to be submitted through the online portal unless given specific direction by the Auditor's staff to do otherwise.

5.3. Edits to already submitted records must be completed by Auditor's staff upon request from the agency.

5.4. All reports are to be submitted on a calendar year/reporting year basis, unless otherwise stated by the Auditor.

5.5. A Statement of Forfeitures and Seizures Report captures these following elements:

5.5.1. Name of the law-enforcement agency or office that seized the property, or if seized by a multijurisdictional task force, the name of the lead agency;

5.5.2. The time and date the property was seized;

5.5.3. The type of property seized, whether real or personal;

5.5.4. The actual or estimated value of the property seized;

5.5.5. The property's final disposition, including the amount received if the property was sold, or if the property was put to use on behalf of a law-enforcement agency or office, the identity of the agency or office that took possession and use of the property;

5.5.6. Whether forfeiture was made by settlement agreement;

5.5.7. Whether any procedure for forfeiture was initiated in accordance with the provisions of §60A-7-705 of W.Va. code, or other identifying information sufficient to permit acquisition of any available public records related to the forfeiture procedure and disposition of the forfeited property;

5.5.8. The disposition of any action under the provisions of §60A-7-705 of W.Va. code;

5.5.9. If an arrest was made;

5.5.10. Whether any charges brought against a defendant in conjunction with a seizure pursuant to this article resulted in deferred action, conviction, plea deal, acquittal, or ongoing criminal case;

5.5.11. When an administrative forfeiture procedure has been initiated pursuant to the provisions of §60A-7-705a of W.Va. code, provide designated information contained in the administrative forfeiture notice;

5.5.12. The total value of seized and forfeited or property held by the agency at the end of the reporting period; and

5.5.13. A copy of the United States Department of Justice's Equitable Sharing Agreement and Certification - Annual Certification Report shall be provided to the State Auditor no later than October 31 each calendar year.

5.6. An Expenditures from Seizures or Forfeitures Funds Report will include:

5.6.1. Reporting Year

5.6.2. Expenditures for Operations and Investigations

5.6.3 Expenditures for Training and Education

5.6.4 Expenditures for Law Enforcement, Public Safety, and Detention Facilities

5.6.5 Expenditures for Law Enforcement Equipment

5.6.6 Expenditures for Joint Law Enforcement/Public Safety Equipment and Operations

5.6.7 Expenditures for Contracts for Services

5.6.8 Expenditures for Law Enforcement Travel and Per Diem

5.6.9 Expenditures for Law Enforcement Awards and Memorials

5.6.10 Expenditures for Drug, Gang, and Other Education and Awareness Programs

5.6.11 Expenditures for Matching Grants

5.6.12 Transfers to Other Participating Law Enforcement Agencies

5.6.13 Expenditures to Support Community-Based Programs

5.6.14 Expenditures Uncategorized

5.6.15 Expenditures for Salaries

5.7. Agency head will carefully review submission and all data and forms filed.

5.8. A Total Assets of Forfeitures and Seized Funds Report will include:

5.8.1. Reporting Year

5.8.2. Total Assets

5.8.3. Total Interest Earned on Assets

5.8.4. A digitally signed Attestation will be completed by the User submitting the data on the last module of the portal, along with the date of submission.

5.8.5. The final module is the attachments page allowing the user to attach their ESAC reports by PDF, or any other attachments they need to submit for context (Word doc, Excel file, etc.).

5.8.6. Once the filing is complete and accurate, the user will click "Submit" located at the bottom right of the window.

5.8.7. The User with an email on file will receive an email that a filing has been submitted.

5.8.8. It is the responsibility of the user to follow up with the agency head and ensure the executives in the agency are aware of the submission.

5.8.9. If there are any discrepancies or errors in reporting found after submission, it is the responsibility of the agency to send communications to the Auditor's staff, and notify them of the errors.

§155-10-6. Required reporting.

6.1. If a law-enforcement agency fails to timely file the forfeiture data identified in this rule, the Auditor shall notify the law-enforcement agency that the report has not been received.

6.1.1 If failure to comply continues past the filing deadline, the Auditor shall disseminate the names of the Law Enforcement agencies that do not comply with this rule on the statewide transparency website for public consumption.

6.2 If, during a calendar year, any law enforcement agency that secures, seized, or forfeited assets that exceeds 50% of the prior year's total seized or forfeited assets, or expends more than 50% of the prior year's total expenditure of forfeited assets shall so advise the Auditor, who will perform an audit.

6.2.1 The auditor may recoup its costs by charging a fee.

6.3 In the course of preparing its annual report, the State Auditor may, in its discretion or good cause shown, perform a financial audit of records related to inventory of seized property and expenditures of forfeiture proceeds by any law-enforcement agency or office in the state.