



**WEST VIRGINIA
SECRETARY OF STATE**

NATALIE E. TENNANT

ADMINISTRATIVE LAW DIVISION

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OFFICE OF
WEST VIRGINIA SECRETARY OF STATE

**FORM 1 -- NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE
(Page 1)**

AGENCY **Election Commission**

RULE TYPE **Procedural** AMENDMENT TO EXISTING RULE No TITLE-SERIES **146-**

RULE NAME **Rules of Procedure for Appeals from Denial of Certificate of Authorization to Print Ballots**

CITE AUTHORITY **3-1A-5 and 3-1-21a**

COMMENTS LIMITED TO
Written

DATE OF PUBLIC HEARING

LOCATION OF PUBLIC HEARING

DATE WRITTEN COMMENT PERIOD ENDS
Friday, June 19, 2015 12:00 PM

WRITTEN COMMENTS MAY BE MAILED TO
**WV State Election Commission
1900 Kanawha Blvd E
Bldg 1 Ste 157-K
Charleston, WV 25305**

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes
Natalie E Tennant -- 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-Series: 146-06



Rule Id: 9777



Document: 26691



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**FORM 1 -- NOTICE OF A PUBLIC HEARING OR COMMENT PERIOD ON A PROPOSED RULE
(Page 2)**

AGENCY Election Commission

RULE TYPE Procedural AMENDMENT TO EXISTING RULE No TITLE-SERIES 146-

RULE NAME Rules of Procedure for Appeals from Denial of Certificate of Authorization to Print Ballots

CITE AUTHORITY 3-1A-5 and 3-1-21a

PROVIDE A BRIEF SUMMARY OF YOUR PROPOSAL

This proposed procedural rule for appeal of denial of a certificate of authorization to print election ballots is required by W.Va. State Code 3-1-21a. The rule provides for notice requirements, timeframes, conduct of hearing procedure, and final review and decisions by the SEC.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes

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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 1)

AGENCY Election Commission

RULE TYPE Procedural AMENDMENT TO EXISTING RULE No TITLE-SERIES 146-

RULE NAME Rules of Procedure for Appeals from Denial of Certificate of Authorization to Print Ballots

CITE AUTHORITY 3-1A-5 and 3-1-21a

PRIMARY CONTACT

Dave Nichols

ADDRESS LINE 1

ADDRESS LINE 2

CITY, STATE ZIP

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RULE NAME Rules of Procedure for Appeals from Denial of Certificate of Authorization to Print Ballots

CITE AUTHORITY 3-1A-5 and 3-1-21a

SUMMARIZE IN A CLEAR AND CONCISE MANNER WHAT IMPACT THIS MEASURE WILL HAVE ON COSTS AND REVENUES OF STATE GOVERNMENT.

The proposed rule will only have an impact if a ballot vendor is denied or refused renewal of a certificate of authority to print ballots. Because we can only guess the number of hearings (0 in the last 7 years), no fiscal impact can be assessed.

Natalie E Tennant -- 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.



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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 2)

AGENCY Election Commission

RULE TYPE Procedural AMENDMENT TO EXISTING RULE No TITLE-SERIES 146-

RULE NAME Rules of Procedure for Appeals from Denial of Certificate of Authorization to Print Ballots

CITE AUTHORITY 3-1A-5 and 3-1-21a

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.

Effect Of Proposal	Current Increase/Decrease (use ' - ')	Next Increase/Decrease (use ' - ')	Fiscal Year (Upon Full Implementation)
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
ESTIMATED TOTAL REVENUES	0	0	0

Natalie E Tennant -- 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.



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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 3)

AGENCY Election Commission

RULE TYPE Procedural AMENDMENT TO EXISTING RULE No TITLE-SERIES 146-

RULE NAME Rules of Procedure for Appeals from Denial of Certificate of Authorization to Print Ballots

CITE AUTHORITY 3-1A-5 and 3-1-21a

3. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT). PLEASE INCLUDE ANY INCREASE OR DECREASE IN FEES IN YOUR ESTIMATED TOTAL REVENUES.

The proposed rule will only have an impact if a ballot vendor is denied or refused renewal of a certificate of authority to print ballots. Because we can only guess the number of hearings (0 in the last 7 years), no fiscal impact can be assessed.

Natalie E Tennant -- 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.



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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 4)

AGENCY Election Commission

RULE TYPE Procedural AMENDMENT TO EXISTING RULE No TITLE-SERIES 146-

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CITE AUTHORITY 3-1A-5 and 3-1-21a

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.

The proposed rule will only have an impact if a ballot vendor is denied or refused renewal of a certificate of authority to print ballots. Because we can only guess the number of hearings (0 in the last 7 years), no fiscal impact can be assessed.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Natalie E Tennant -- 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.



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FORM 12 -- BRIEF SUMMARY AND STATEMENT OF CIRCUMSTANCES (Page 1)

AGENCY Election Commission

RULE TYPE Procedural AMENDMENT TO EXISTING RULE No TITLE-SERIES 146-

RULE NAME Rules of Procedure for Appeals from Denial of Certificate of Authorization to Print Ballots

CITE AUTHORITY 3-1A-5 and 3-1-21a

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

The proposed procedural rule for appeal of a denial of a certificate of authorization to print election ballots is required by W.Va. Code 3-1-21a. Statute provides that the initial decision is made by the Secretary of State, but a vendor may appeal the decision to the State Election Commission. This rule provides for notice requirements, timeframes, conduct of hearing procedure, and final review and decision by the SEC.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes

Natalie E Tennant -- 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.



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TITLE 146
PROCEDURAL RULE
STATE ELECTION COMMISSION

SERIES 6
RULES OF PROCEDURE FOR APPEALS FROM DENIAL OF
CERTIFICATE OF AUTHORIZATION TO PRINT BALLOTS

§ 146-6-1. General.

1.1. Scope. -- This procedural rule establishes the general procedures for appeals to the State Election Commission from denial, suspension or revocation, by the Secretary of State, of a certificate of authorization to print ballots used in West Virginia elections.

1.2. Authority. -- W. Va. Code §§ 3-1A-5 and 3-1-21a

1.3. Filing Date. -- _____.

1.4. Effective Date. -- _____.

§ 146-6-2. Definitions.

2.1. "File" means submit in person, or by mail, email, or fax. The date of filing will be the date delivered in person, by email, or fax and the date of postmark if mailed.

2.2. "Hearing" means a proceeding conducted by a hearing officer convened for the purpose of taking testimony, considering arguments, and making to the State Election Commission a recommended decision on an appeal by a vendor denied authorization to print ballots, or by a vendor whose authorization has been revoked or suspended.

2.3. "Hearing Officer" means a person selected by the Secretary of State to conduct the appeal hearing and issue a proposed Order, with findings of fact and conclusions of law, resolving the appeal

2.4. "Secretary" means the Office of the Secretary of State.

2.5. "SEC" means the State Election Commission.

2.6. "Vendor" means any person, firm, or group seeking or holding authorization issued by the Secretary of State to print ballots for any election held in West Virginia.

§ 146-6-3. Notice of Appeal Following Denial, Suspension or Revocation of Certificate of Authority.

3.1. A determination by the Secretary, pursuant to W.Va. Code § 3-1-21a, to deny an application for certificate of authority to print ballots, or suspend or revoke such authority, shall be mailed

to the vendor by certified mail, return receipt requested.

3.2. The vendor may appeal the Secretary's denial to the SEC.

3.3. The appeal must be in writing and submitted to the Secretary.

3.4. The appeal must be received by the Secretary within sixty (60) days from the date the notice of suspension or revocation is mailed to the vendor by the Secretary.

§ 146-6-4. Scheduling Appeal Hearing; Time for filing written arguments and evidence.

4.1. The Secretary shall notify the SEC and schedule a date and time to hear the appeal of the vendor.

4.2. The Secretary shall select a Hearing Officer and shall schedule a hearing to be held within sixty (60) days from receipt of the appeal by the Secretary.

4.3. Notice of the hearing date and time shall be provided to the vendor at least thirty days before the date of the hearing.

4.3. The Hearing Officer may schedule a date in advance of the hearing by which the vendor must file any written arguments, citations of authority, or documentary evidence to be considered by the hearing officer. If no scheduling order is issued by the Hearing Officer, then all matters to be considered must be submitted no later than the hearing.

§ 146-6-5. Conduct of Hearing; Legal Representation; Continuance.

5.1. The hearing may be continued, and rescheduled, for good cause as determined by the Hearing Officer.

5.2. The vendor may be represented by legal counsel. The SEC may be represented by the Attorney General. Members of the SEC may attend the hearing and may ask questions through their counsel.

5.3. The vendor may present testimony under oath and argument for the consideration of the SEC. The SEC, or individual members, may question any witness or presenter through counsel.

5.4. The Hearing Officer may question any witness or presenter and may require the presence of staff of the Secretary to answer questions and address matters that may arise during the hearing.

5.5. The vendor may submit proposed findings of fact and conclusions of law at the hearing or at any post-hearing time permitted by the hearing officer.

5.6. The hearing shall be recorded, but only transcribed if an appeal from the final order is made or if requested by the vendor. The vendor is responsible for the cost of a requested transcription.

§ 146-6-6. Orders; Content; Appeal.

6.1. The Hearing Officer shall file with the Secretary a proposed Order, including findings of fact and conclusions of law, resolving the appeal no later than fifteen days after the conclusion of the hearing or the expiration of any time for post-hearing filings, whichever is later.

6.2. The SEC shall hold a meeting within fifteen days of receipt of the proposed Order and, by a majority vote of a quorum of the SEC membership, shall either adopt the proposed Order or direct the writing of a different Order.

6.3. Every final order entered by the SEC shall be made pursuant to the provisions of W. Va. Code §29A-5-3. The final order need only be signed by one member, as designated by vote of the SEC.

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

§ 146-6-7. Severability.

7.1. 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.