

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

Form #4

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: West Virginia Ethics Commission TITLE NUMBER: 158

CITE AUTHORITY: W.Va. Code 6B-3-11

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: 15

TITLE OF RULE BEING PROPOSED: Compliance Audits

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

Lewis D. Brown, Executive Director
Authorized Signature

[Handwritten Signature]

**TITLE 158
LEGISLATIVE RULE
WEST VIRGINIA ETHICS COMMISSION**

**SERIES 15
COMPLIANCE AUDITS**

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§ 158-15-1. General.

- 1.1. Scope. – This legislative rule sets forth the guidelines for conducting audits of registration statements and reports filed by lobbyists under this chapter.
- 1.2. Authority. – W.Va. Code § 6B-3-11
- 1.3. Filing Date. -
- 1.4. Effective Date. -

§ 158-15-2. Manner of Conducting Lotteries.

- 2.1. Each year, the Commission will initiate, by lottery, random audits of lobbyist registration statements, disclosure reports, including lobbyist activity reports and statements of registration required to be filed in accordance with the West Virginia Ethics Act.
- 2.2. For purposes of the lottery, each registered lobbyist shall be assigned a number. The lottery shall be conducted by Commission staff through the random selection of numbers by a computerized random number program in accordance with recognized statistical sampling standards.
- 2.3. The Commission will not hold more than four lotteries per year. Each year the number of audits to be conducted will be determined by the Commission through resolutions adopted at public meetings.
- 2.4. No lobbyist will be subject to a random audit more than once in any 24-month period.

§ 158-15-3. Documents maintained by lobbyist.

- 3.1. An audit shall include registration statements, notices of representation and lobbyist activity reports, as well as other relevant information to verify, explain, clarify, support or contravene the registration statements and spending reports.
- 3.2. An audit shall be limited in time to the previous 2 years, except that lobbying activities performed prior to July 1, 2005, will not be audited under the act.

§ 158-15-4. Auditor Requirements.

- 4.1. The audit shall be conducted by a certified public accountant. All certified public accountants, sole practitioners, partnerships or professional corporations (firm) must meet specific criteria in order to be eligible for appointment to conduct an audit. The following criteria must be met by the CPA:
 - 4.1.a. Both resident and non-resident certified public accountants must be currently licensed by the West Virginia Board of Accountancy to perform

accounting services in West Virginia. (WV Code § 30-9-6, § 30-9-11)

- 4.1.b. Both resident and non-resident firms must possess a valid current business franchise registration issued by the West Virginia State Auditor's Office.
- 4.1.c. Each firm must be registered as a vendor with the West Virginia Department of Administration, Purchasing Division. The vendor registration form, WV-1, may be obtained by contacting the Purchasing Division at 304-558-2311.
- 4.1.d. The completed WV-1 form must also be sent to the West Virginia Ethics Commission.
- 4.1.e. The firm must have no outstanding or delinquent payments due the Bureau of Employment Programs Commissioner for either Unemployment Compensation or Workers Compensation insurance premiums.

§ 158-15-5. Audit procedures.

- 5.1. The following general procedures will be employed by the Commission and certified public account when initiating and conducting audits:
 - 5.1.a. At least 30 days prior to the initiation of the audit, each audit subject will be advised by letter that it was randomly selected for audit and further advised of the time, date, place and general scope as well as a tentative time frame for completion of the audit. The letter will contain a request for documents deemed necessary for conduct of the audit.
 - 5.1.b. Prior to the initiation of the audit, a review of the subject's reports on file with the Commission for a period not to exceed 2 years will be conducted.
 - 5.1.c. The audit will be initiated by way of conference with the lobbyist.
 - 5.1.d. The audit will include a detailed field examination of the financial records of the audit subject relating to lobbying activities.
 - 5.1.e. The audit may include independent verification of some or all of the information reported.
 - 5.1.f. The audit may include related records from other sources, in which case the subject of the audit shall cooperate fully and shall execute all waivers, releases or authorizations to allow the Commission to obtain the records.
 - 5.1.g. Registered lobbyists shall have an affirmative duty to cooperate fully in any audit of themselves.
 - 5.1.h. The audit may include interviews of lobbyists and employees thereof and other public officials or individuals necessary to the completion of the audit.

- 5.1.i. A post audit conference will be conducted with the subject of the audit.
- 5.1.j. Post audit preparation of a report describes the result of the audit.

§ 158-15-6. Audit Report.

- 6.1.a. The person or firm that is responsible for performing compliance audits will, at the conclusion of each audit, prepare a final audit report which will include findings; Provided, That, the findings shall be limited to information contained in or relevant to lobbyist registration statements, disclosure reports, including lobbyist activity reports and statements of registration. No information which is not required to be reported, including but not limited to lobbyist compensation, shall be included.
- 6.1.b. An audit report may include recommendations as to record keeping, reporting and other related practices arising from the audit.
- 6.1.c. Upon completion, an audit report will be served upon the lobbyist that is the subject of the audit.
- 6.1.d. Service of the audit report shall be complete upon mailing.
- 6.1.e. Within 30 days of service of the audit report, the subject of the audit may file with the Commission a statement setting forth the subject's position as to the audit report.
- 6.1.f. Audit reports and any related responses shall be submitted to the Executive Director of the Commission for review, and may form the basis for further proceedings under the Ethics Act.
- 6.1.g. The Commission must approve the report. The report may only be approved once the Commission finds that:
 - 6.1.g.1. No further activity is required by the auditor;
 - 6.1.g.2. There is no information disclosed in the report relating to lobbyist compensation or other information which is not required to be disclosed pursuant to W.Va. Code § 6B-3-1 *et. seq.*
 - 6.1.g.3. The report is final.
- 6.1.h. If the Commission finds that further activity is required by the auditor or that there is information contained in the report relating to lobbyist compensation or other information which is not required to be disclosed pursuant to W.Va. Code § 6B-3-1 *et. seq.*, then the Commission shall direct the auditor to take further action or to remove any portions of the report which contain nonpublic information. The auditor will take the action directed by the Commission and then resubmit a revised final report for approval by the Commission.
- 6.1.i. The final audit report and related responses will be made available for public inspection after the Commission has approved the report.