WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION

Form #7

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2009 JUL 31 PM 1:51

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: WorkForce West Virginia TITLE NUMBER: 96

CITE AUTHORITY: West Virginia Code §21A-1-4(d)

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES ____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 3

TITLE OF RULE BEING PROPOSED: Rule for Employer Violator System

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

West Virginia Code §21A-1-4(d) makes it mandatory that the Executive Director of WorkForce West Virginia propose emergency rules to effectuate the above subsection of West Virginia Code.

Use additional sheets if necessary

Authorized Signature

SUMMARY OF FACTS AND CIRCUMSTANCES

West Virginia Code § 21A-1-4(d) passed April 11, 2009 and in effect from passage mandates an emergency rule to effectuate this subsection. The emergency rule mandates how the Executive Director of WorkForce West Virginia establishes an employer violator system or list to identify for the public and other state agencies individuals and employers who are in default on any assessment, surcharge, tax or penalty owed to the unemployment compensation fund. It also establishes due process rights for individuals and employers who are incorrectly placed on the employer violator list.

EMERGENCY RULE QUESTIONNAIRE

DATE: July 31, 2009

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM:(*Agency Name, Address & Phone No.*) WorkForce West Virginia
112 California Avenue, Charleston, West Virginia 25305
Attention: Mary Blaine McLaughlin, Senior Counsel Phone: (304) 558-3403

EMERGENCY RULE TITLE: Rule for Employer Violator System

1. Date of filing July 31, 2009

2. Statutory authority for promulgating emergency rule:

~~§21A-1-4(d) of the West Virginia Code~~

3. Date of filing of proposed legislative rule: July 31, 2009

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? ~~New Language~~

5. Has the same or similar emergency rule previously been filed and expired?

~~No~~

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.

Mandated by statute, West Virginia Code §21A-1-4(d), to be filed by emergency rule

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

West Virginia Code §21A-1-4(d) passed April 11, 2009 in effect from passage

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

Mandated by statute, West Virginia Code §21A-1-4(d)

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rule for Employer Violator System Title 96

Type of Rule: [X] Legislative [ ] Interpretive [ ] Procedural

Agency: WorkForce West Virginia

Address: 112 California Avenue
Charleston, West Virginia 25305

Attention: Mary Blaine McLaughlin, Counsel

Phone Number: (304) 558-3403 Email: mmclaugh@workforcewv.org

Fiscal Note Summary

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

There will be costs to set up the website, and at this time, we do not know how much those costs will be.

There will also be additional costs to mail notices to all prospective employers who will be initially included on the violators list.

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			
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: Title 96

Rule Title: Rule for Employer Violator System Title 96

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

Additional costs will be that of creating and maintaining the Employer Violator Website. At this time there is no estimated cost projection. Currently, staff is working on the collection of delinquest accounts. A small expense may be incurred for any hearings held. However, based on past experience we do not feel many hearings will be requested. Additionally, we anticipate that any costs incurred as a result of the rule will be offset by additional amounts collected from employers in default.

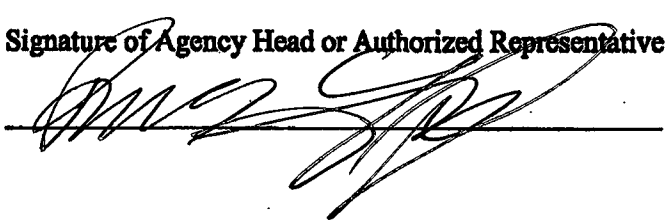
MEMORANDUM

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.

This agency has no information on how much control or interest an employer has in a company and the Executive Director has no such statutory authority to define such interest or control of an employer. Wherefore, this condition can not be effectuated in the statute by this rule as a condition of preventing an employer from obtaining a license, certificate or permit.

Date: July 31, 2009

Signature of Agency Head or Authorized Representative



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OFFICE WEST VIRGINIA
SECRETARY OF STATE

96 CSR 3

PROCEDURAL RULE

WORKFORCE WEST VIRGINIA

SERIES 3

RULE FOR EMPLOYER VIOLATOR SYSTEM

§96-3-1. General.

1.1. Scope. -- This procedural rule is intended to set forth the procedures enabling the implementation of the provisions of West Virginia Code §21A-1-4(d) that establishes an employer violator system to identify individuals and employers who are in default on any assessment, surcharge tax, or penalty owed to the unemployment compensation trust fund.

1.2. Authority. -- West Virginia Code §21A-1-4(d). Emergency Legislative Rule requirements of West Virginia Code §29A-3-1 et seq, must be followed pursuant to the Acts of the Legislature,3rd Executive Session, 1988, §29A-3A-16.

1.3. Filing date. --

1.4. Effective date. --

1.5. Repeal and replacement. -- This rule amends 96 CSR 1.

§96-1-2. Definitions.

The following terms and words have the meanings stated, unless the context clearly indicates otherwise.

2.1. "Agency" includes any unit of state government such as officers, agencies, divisions, departments, boards, commissions, authorities, or public corporations.

2.2. "Employer" includes any individual or type of organization as defined in §21A-1A-14 of the West Virginia Code which has in its employ one or more individuals performing service within this State.

2.3. "Employer Violator List" includes any employer as defined above which has a lien filed against them by WorkForce West Virginia due to his or her default on any assessment, surcharge, tax or penalty owed to the unemployment compensation trust fund.

2.4. "Fund" means the unemployment compensation trust fund.

2.5. "Hearing" is defined in 96, CSR 2, Rule for Administrative Hearings.

2.6. "Code" means the West Virginia Code of 1931, as amended.

2.7. "License" is a document or permit certified which the employer must obtain in order for him or her to do business (ie. contractor's license, law license, doctor's license, timbering permit)

2.8. "Default", for purposes of the administration of chapter twenty-one-a of the Code means that an employer is in default when, after due notice, the employer fails to submit a required payment, interest thereon, or penalty, and has not entered into a properly executed repayment agreement with WorkForce West Virginia or has entered into an appropriate repayment agreement, but does not remain in compliance with its obligations under the repayment agreement.

For purposes of this rule, an employer who has failed to submit required payments, interest or penalties, or required quarterly reports by the required due dates is presumed to be in default.

2.9. "Division" means the division of unemployment compensation within WorkForce West Virginia.

2.10. "Employing unit" means an individual, or type of organization, including, any partnership, association, trust, estate, joint-stock company, insurance company, corporation (domestic or foreign), state or political subdivision thereof, or their instrumentalities, as provided in paragraph (B), subdivision (9) [§21A-1A-17(9)(B)] of the definition of "employment" in this article, institution of higher education, or that receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has in its employ one or more individuals performing service within this state. The presumptions of ownership or control contained in the Division of Environmental Protection's Surface Mining Reclamation Regulations promulgated under the provisions of §22-3-1 of the West Virginia Code are not applicable or controlling in determining the identity of employing units who are in default for the purposes of this subdivision.

2.11. "Grant" and "Issue" include not only the original issuance or granting of an approval document but also any transfer, assignment or sale of the document, if otherwise, allowed.

2.12. "List" means a paper or database identification of an employing unit that is in default with WorkForce West Virginia. The list, which will be created by WorkForce West Virginia, may be provided to the agency in the form of either a computerized database or other databases that the agency can access.

2.13. "Person" means any public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or county; any governmental agency; political subdivision; county commission; municipality; industry; public service district; partnership; trust; estate; person or individual; and group or persons or individuals acting individually or as a group or any other legal entity whatever.

2.14. "Repayment agreement" means a written agreement to pay in full all delinquent amounts owed to the Agency, including interest and penalties, under the provisions of chapter twenty-one-a of the Code, but does not include repayment agreements entered into prior to the effective date of this rule, unless the agreement is modified to include the provisions required in this definition.

2.15. "Review" means either to query a computerized database or list to determine if the applicant's name included is in default with the Executive Director with regard to the administration of Chapter twenty-one-a of the Code.

2.16. "WorkForce West Virginia" is the West Virginia Bureau of Employment Programs pursuant to §21A-1-4(b) of the West Virginia Code.

§96-1-3. General Prohibition.

Pursuant to the provision of West Virginia Code §21A-1-4(d), an agency may not grant, issue or renew any permit license or certification with an employer who is in default on any assessment, surcharge, tax or penalty owed to the unemployment compensation fund until such employer has paid back all moneys owed to the fund or has entered into or remains in compliance with a repayment agreement.

§96-1-4. Employer Violator List.

When an employer has a lien filed against its property, its name will be placed on the employer violator list and only removed from the list when the lien is paid in full. This list is available to the public.

§96-1-5. Timing of Review of License or Permit.

5.1. After an application is complete and no further changes may be made to it prior to its final approval and before it is issued, an agency shall review the list. This does not prevent a review prior to that time and notifying the applicant of the results.

5.2. If the applicant's name appears as being in default, an agency shall notify the applicant in writing, as in their normal course of business, that the agency has been informed that the applicant is in default with the Executive Director with regard to the administration of chapter twenty-one-a of the Code and that the approval document can

not be issued until the applicant is no longer in default. A copy of the notice shall be sent to the Executive Director addressed as follows:

Director of Unemployment Compensation
WorkForce West Virginia
Unemployment Compensation
112 California Avenue
Charleston, West Virginia 25305

5.3. If the approval document is not issued, granted or renewed within fourteen calendar days of the review that caused notice to be given to the applicant under subsection 4.2 of this section, a new review shall be conducted.

5.4. If the applicant disagrees with WorkForce West Virginia's decision of placing his name on the default list, he may request a hearing under 96CSR2.

§96-1-6. Revocation.

6.1. Pursuant to the provisions of W. Va. Code §21A-1-4(d), an agency shall revoke any approval document of any employing unit whose account is in default with the Executive Director at the time the license, permit, contract, certificate or other authority is renewed.

6.2. If WorkForce West Virginia has reason to believe that an employing unit that is in default is conducting its business pursuant to an approval document with an agency, WorkForce West Virginia shall notify the agency to revoke the approval documents.

6.3. If the agency determines that the employing unit, that is the subject of the notification in subsection 5.2., is conducting its business pursuant to an approval document issued by the agency, the agency shall notify the employing unit in writing, as in their normal course of business, that the agency has been notified that the employing unit is in default with WorkForce West Virginia under the provisions of chapter twenty-one-a of the Code and that the approval document must be revoked. *The agency will have 90 days from the date of notification from WorkForce West Virginia to revoke the employing unit's license or until the employing unit is no longer in default.* A copy of the notice shall be sent to WorkForce West Virginia addressed as follows:

Director of Unemployment Compensation Division
WorkForce West Virginia
112 California Avenue
Charleston, West Virginia 25303

§96-1-7. Conditional Issue.

An approval document shall be conditionally issued or conditionally restored if revoked, if the applicant has entered into a repayment agreement with WorkForce West Virginia for payment in full of all payments, interests and penalties owed. If the applicant does not maintain continued compliance with the repayment agreement, WorkForce West Virginia shall notify the agency that the applicant is in noncompliance. Upon receiving the notice, an agency shall rescind the approval document.

§96-1-8. Request for Review.

When an employing unit's contract, license, permit, certificate or other authority is revoked or not issued or renewed due to its unemployment compensation account being in default with WorkForce and its name appearing on the employer violator list, the employing unit in default may request a review of the decision from the Director of the Unemployment Compensation Division at the address that follows.

Director of Unemployment Compensation Division
WorkForce West Virginia
112 California Avenue
Charleston, West Virginia 25305

§96-1-9. Severability.

If any provisions of this rule or the application thereof to any entity or circumstance is held invalid, such invalidity does not affect the provisions or the applications of this rule which can be given affect without the invalid provisions or application and to this end the provisions of this rule are declared to be severable.