

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

Do Not Mark In this Box

SEP 19 2 56 PM '99

OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Bureau of Employment Programs TITLE NUMBER: 96

RULE TYPE: Legislative Exempt; CITE AUTHORITY W. Va. Code §21A-2-6(18)

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 NEW RULE BEING PROPOSED: 1

TITLE OF RULE BEING PROPOSED: Rule Implementing The Requirement That Prohibits Agencies From Granting, Issuing, Or Renewing Contracts, Licenses, Permits, Certificates, Or Other Authority To Conduct A Trade, Profession, Or Business To Or With Any Employing Unit Who Is In Default With Regards To Unemployment Compensation Or Workers' Compensation.

DATE OF PUBLIC HEARING: Monday, November 1, 1999 TIME: 10:00 a.m.

LOCATION OF PUBLIC HEARING: Charleston Civic Center

Room 206

Civic Center Drive

Charleston, West Virginia

COMMENTS LIMITED TO: ORAL___, WRITTEN___, BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Mary Blain McLaughlin

Legal Services Division


112 California Avenue

Charleston, W. Va. 25305

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL


William F. Vieweg,
Commissioner

\$4.00

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Title 96

Rule Title: _____

Type of Rule: Legislative Interpretive Procedural

Agency Bureau of Employment Programs

Address 112 California Avenue

Charleston, West Virginia 25305

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERNATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of above estimates:

We feel that no additional costs will be incurred with this rule. We currently have staff working on the collection of delinquent accounts. We may incur a small expense for costs of 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.

3. Objectives of these rules:

This rule is an attempt to meet the legislative requirements contained in W. Va. Code 21A-2-6(18). It identifies the Division of Environmental Protection as an agency of the State that must review appropriate databases in an attempt to keep from granting, issuing, or renewing contracts, licenses, permits, certificates, or other authority to conduct a trade, profession, or business to or with employing units that are in default with the Commissioner of the Bureau of Employment Programs. The rule attempts to provide a simple procedure to insure the legislative requirements are met while limiting the impact the requirements may have on the Division and the employer community.

Rule Title: Title 96

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

It is expected that the impact of the rule will lead to increased collection of defaulted workers' compensation premium taxes, unemployment compensation taxes and related interest and penalties.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

Collecting amounts from those employers that are in default should help reduce the potential burden of increased tax rates on those employers that do make required payments.

C. Economic Impact on Citizens/Public at Large.

This rule will not have a direct economic impact on the citizens of West Virginia.

Date:

 9/20/99

Signature of Agency Head or Authorized Representative

William F. Vieweg, Commissioner
Bureau of Employment Programs

TITLE 96

EXEMPT LEGISLATIVE RULE

BUREAU OF EMPLOYMENT PROGRAMS

SERIES 1

**RULE IMPLEMENTING THE
REQUIREMENT THAT PROHIBITS AGENCIES FROM
GRANTING, ISSUING, OR RENEWING CONTRACTS,
LICENSES, PERMITS, CERTIFICATES, OR OTHER
AUTHORITY TO CONDUCT A TRADE, PROFESSION, OR
BUSINESS TO OR WITH ANY EMPLOYING UNIT WHO IS IN DEFAULT
WITH REGARDS TO UNEMPLOYMENT COMPENSATION
OR WORKERS' COMPENSATION**

OFFICE OF THE CLERK OF THE SENATE
MAY 23 2 56 PM '99
OFFICE OF THE CLERK OF THE SENATE

§96-1-1. General.

1.1. Scope. -- This legislative exempt rule is intended to set forth the procedures enabling the implementation of the provisions of West Virginia Code § 21A-2-6(18) which prohibits agencies defined as any unit of state government such as officers, agencies, divisions, departments, boards, commissions, authorities or public corporations, from granting, issuing, or renewing any contract, license, permit, certificate, or other authority to conduct a trade, profession, or business to or with any employing unit whose account is in default with the Commissioner of the Bureau of Employment Programs with regard to the administration of chapters twenty-one-a or twenty-three of the Code of West Virginia.

1.2. Authority. -- West Virginia Code § 21A-2-6(18), (1), (2) & (14); § 21A-2-19; § 21A-3-7(b) & (c), § 23-1-1, § 23-2-9; and § 23-2-17. Pursuant to West Virginia Code § 21A3-7(c), rules adopted by the Compensation Programs Performance Council and the Commissioner are not subject to legislative approval as would otherwise be required under West Virginia Code § 29A-3-1 et seq. Public notice requirements of that chapter and article, however, must be followed. Pursuant to the Acts of the Legislature, Regular Session, 1994, Chapter 63, the Department of Commerce, Labor and Environmental Resources was abolished.

1.3 Filing date. --

1.4. Effective date. --

1.5. Repeal and replacement. -- This rule does not repeal or and replace any rule.

§96-1-2. Definitions.

As used in this rule, the following terms, words, and phrases have the meanings stated unless in any instance where such term, word, or phrase is used the context clearly indicates that another meaning is intended.

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

2.2. “Applicant” means an employing unit that is seeking the issuance, granting or renewal of an approval document.

2.3. “Application” means application or other form, including proposed contracts, seeking the issuance, granting or renewal of an approval document regardless of the name assigned to it.

2.4. “Approval document” means any contract, license, permit, certificate, or other authority to conduct a trade, profession, or business.

2.5. “Code” means the West Virginia Code of 1931, as amended.

2.6. “Commissioner” means the Commissioner of the Bureau of Employment Programs, pursuant to West Virginia Code § 21A-2-1, -12 and -13.

2.7. “Council” means the Compensation Programs Performance Council, created in article three, chapter twenty-one-a of the Code.

2.8. “Default” for purposes of the administration of chapter twenty-three of the Code means being in default as provided in West Virginia Code § 23-2-5(d), except as otherwise provided in this subsection. For purposes of the administration of chapter twenty-one-a of the Code 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 repayment agreements with the appropriate divisions of the Bureau or has entered into appropriate repayment agreements, but does not remain in compliance with its obligations under the repayment agreements.

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 Workers’ Compensation Division or the Unemployment Compensation Division, or both, within the Bureau of Employment Programs.

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 the 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 subscribers to either the Division of Unemployment Compensation or Workers' Compensation, who are in default. The list, which will be created by the appropriate division of the bureau, may be provided to the agency in the form of a computerized database or 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 of 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 commissioner, including interest and penalties, under the provisions of chapters twenty-one-a or twenty-three of the Code, or both. Any approval document issued on the basis that the employer is not in default because it is in compliance with a repayment agreement shall be conditionally issued. Every repayment agreement shall contain a provision in which the delinquent employer agrees to surrender any approval document issued, granted or renewed subsequent to the date of the repayment agreement to be summarily rescinded if the employer defaults in the repayment agreement. As used in this rule repayment agreements do 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 to determine if the applicant is identified as in default or to determine whether the applicant's name is included on the list of employers in default provided by the appropriate divisions of the Bureau of Employment Programs.

§96-1-3. General Prohibition.

Pursuant to the provisions of West Virginia Code §21A-2-6(18), an agency may not grant, issue, or renew any approval document to, or enter into an approval document with, any applicant whose account is in default with the Commissioner with regard to the administration of chapters twenty-one-a or twenty-three of the West Virginia Code.

§96-1-4. Timing of Review.

4.1. 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 or lists and/or database or databases provided by the Commissioner to determine if the applicant's name appears as being in default. This does not prevent a review prior to that time and notifying the applicant of the results.

4.2. If the applicant's name appears as being in default, an agency, shall notify the applicant in writing, by certified mail, return receipt requested, that the agency has been informed that the applicant is in default with the Commissioner with regard to the administration of chapters twenty-one-a or chapter twenty-three of the Code or both 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 Commissioner addressed as follows:

Bureau of Employment Programs
Unemployment Compensation Division
Attention: Assistant Director,
Contribution Accounting Section
112 California Avenue
Charleston, West Virginia 25305

Bureau of Employment Programs
Workers' Compensation Division
Attention: Director, Receivables
Management Unit
Post Office Box 153
Charleston, West Virginia 25321

4.3. If the approval document is not issued granted or renewed within 14 calendar days of the last review, a new review shall be conducted.

§96-1-5. Conditional Issue.

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

§96-1-6. Hearing.

6.1. The notice required by subsection 4.2 shall advise the applicant, or its representative, that it may request a hearing to contest the fact of default or other relevant issue. The representative may then request, in writing, a hearing from the Commissioner of Bureau of Employment Programs within thirty (30) days of receipt of notice. The request for a hearing shall be addressed as follows:

Bureau of Employment Programs
Attention: Director, Legal Services Division
Post Office Box 3922
Charleston, West Virginia 25339-3922

6.2. If the Commissioner finds the default is final due to a prior administrative or judicial action, or final due to failure to previously exhaust available remedies, the applicant may not contest the fact of default.

6.3. Hearings shall be conducted in accordance with the provisions of 85 C.S.R. 7, Rules for Selected Hearings.

§96-1-7. Request for hearing.

The request for a hearing shall include:

- (1) A copy of the notice sent by an agency, or employing unit;
- (2) A statement of the facts that entitle the applicant to administrative relief;
- (3) A statement whether the applicant wishes an evidentiary hearing or waives the opportunity for such a hearing;
- (4) A request for specific relief; and
- (5) Any other relevant information.

§96-1-8. Burden of proof.

The Commissioner has the burden of going forward to present a prima facie case that the applicant is in default. The applicant shall then present evidence that it is not in default.

§96-1-9. Procedure for petitioning for exemption.

9.1. After being subject to this rule for at least twelve months an agency, or any other interested person, may petition the Council to be exempt from the provisions of this rule.

9.2. If the agency petitions to be exempt, it must clearly demonstrate to the Council that the provisions of the rule are unduly burdensome and that its efforts in complying with the rule do not result in an incentive for any significant number of employers to comply with the payment provisions of chapters twenty-three or twenty-one-a of the Code, or both.

9.3. If a person other than the agency petitions to be exempt, the person must clearly demonstrate that the rule is unreasonably burdensome, that the rule is not a significant incentive for the person's compliance with the payment provisions of chapters twenty-three or twenty-one-a of the Code, or both, and that the person has an exemplary record of payment of amounts due under the provisions of chapters twenty-three or twenty-one-a of the Code, as applicable.

9.4 Within the Division of Environmental Protection this provision will apply to new environmental approval documents and transfers of existing environmental approval documents. Renewal permits, modifications, closures, certificates, abandonments, reclamation activities and any other activity which may place human health or the environment at risk if a needed approval document is not issued will be exempt from this requirement.

§96-1-10. Severability.

If any provision 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.

Cecil H. Underwood
Governor

William F. Vieweg
Commissioner



West Virginia Bureau of Employment Programs

- Job Service/Job Training Programs • Labor Market Information
 - Unemployment Compensation • Workers' Compensation
- an equal opportunity/affirmative action employer*

September 20, 1999

The Honorable Ken Hechler
Secretary of State
State Capitol Building
Charleston, West Virginia 25305

Re: Title 96, Series I—
“Rule Implementing The Requirement That Prohibits
Agencies From Granting, Issuing, Or Renewing Contracts,
Licenses, Permits, Certificates, Or Other Authority To
Conduct A Trade, Profession, Or Business To Or With Any
Employing Unit Who Is In Default With Regards To
Unemployment Compensation or Workers' Compensation”

Dear Secretary Hechler:

Please consider this letter to be my written approval for the filing of the
above-noted proposed rule.

Pursuant to Enrolled Committee Substitute for House Bill 4030, Regular
Session, 1994, the Department of Commerce, Labor and Environmental
Resources was abolished. Pursuant to that same bill and to Executive Order
No. 5-94 of the Governor, the Commissioner of the Bureau of Employment
Programs is empowered to promulgate rules without the consent or approval of a
department secretary.

Thank you very much for your assistance in this matter.

Very truly yours,

William F. Vieweg
Commissioner