

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #5

FILED

Dec 15 2 57 PM '99

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: Bureau of Employment Programs TITLE NUMBER: 96 Series I

CITE AUTHORITY: § 21A-2-6(18)

RULE TYPE: PROCEDURAL _____ INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE X
CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES _____, NO X

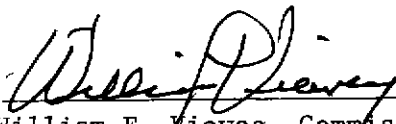
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: Series I

TITLE OF RULE BEING ADOPTED: 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.

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE EFFECTIVE DATE OF THIS RULE IS JANUARY 14, 2000


William F. Vieweg, Commissioner and
Chairman of Compensation Programs
and Performance Council

Vice-Chairman, Compensation
Programs Performance Council

\$4.00

TITLE 96, SERIES 1

BRIEF SUMMARY OF THE RULE

This rule implements the provisions of West Virginia Code § 21A-2-6(18) by specifically identifying the Division of Environmental Protection as one of the many agencies that is required to withhold the approval, issuance, or renewal, of 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 regards to workers' compensation premium taxes and unemployment compensation taxes. The rule provides for the review of appropriate databases, or lists, to determine if the subject employer, or agency, is in default. It also provides a due process procedure allowing employers, or agencies, notice to contest the fact of default when the fact of default has not previously been established or the employer has not had the opportunity to contest the amount.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE PROPOSED RULE

West Virginia Code § 21A-2-6(18) requires the Commissioner with the approval of the Compensation Performance Council... to promulgate rules "under which agencies of this state shall not grant, issue, or renew 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 with regard to the administration of this chapter and with regard to the administration of chapter twenty-three of this code..." Moreover, it allows the Commissioner to promulgate the rules in phases so that different agencies become subject to the rules at different times. However, rules subjecting all agencies to its requirements are to be promulgated no later than the first day of January, two thousand.

FILED

TITLE 96

Dec 15 2 57 PM '99

EXEMPT LEGISLATIVE RULE

BUREAU OF EMPLOYMENT PROGRAMS OFFICE OF GOVERNMENT AFFAIRS, VIRGINIA
SECRETARY OF STATE

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**

§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) ~~that~~ 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~~. West Virginia Code.

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 §21A-3-7(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.~~

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

2.3. "Application" means ~~application~~ a completed form or other ~~form~~ document, including a 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 a paper or database identification of an employing unit that is in default to either the Division of Unemployment Compensation or the Division of 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 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 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 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 is identified as in default or to determine whether the

applicant's name is included ~~on the list of employers as~~ 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 as in their normal course of business,~~ 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 fourteen calendar days of the last review, ~~a new review shall be conducted.~~ that caused notice to be given to the applicant under subsection 4.2 of this section, a new review shall be conducted.

§96-1-5. Conditional Issue.

An approval document shall be conditionally issued if the applicant has entered into a 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.~~

~~§96-1-6. Request for Review.~~

6.1 When an employing unit's contract license, permit, certificate or other authority is not issued or renewed due to either its unemployment or workers compensation account being in default with the Commissioner and its name appearing on

the list, the employing unit who is in default may request a review of the decision from the Director of the Legal Services Division at the address as follows:

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

§96-1-7. Procedure for petitioning for exemption.

7.1. 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.

7.2. 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.

7.3. 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.~~

§96-1-8. Procedures for implementation.

8.1. Notwithstanding other provisions of this rule, the Commissioner and the Tax Commissioner shall adopt mutually agreed procedures for automated review and matching of Tax Department databases with databases of the Bureau of Employment Programs for implementation of § 21A-2-6(18) of the West Virginia Code.

§96-1-9. 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 effect 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

OFFICE
SECRETARY
STATE

SEP 20 2 52 PM '99

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

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

Do Not Mark In this Box
SEP 23 2 52 PM '99
OFFICE

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 X

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
William F. Vieweg,
Commissioner

3

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

BEFORE THE WEST VIRGINIA BUREAU OF EMPLOYMENT PROGRAMS
WORKER'S COMPENSATION PERFORMANCE REVIEW COUNCIL

IN RE: PROPOSED RULE MAKING FOR IMPLEMENTATION OF
WEST VIRGINIA CODE § 21A-2-6(18)

TRANSCRIPT OF PROCEEDINGS had and testimony
adduced at a hearing held, pursuant to notice,
before the Workers' Compensation Performance Review
Council on the 1st day of November, 1999 in Room
206, Charleston Civic Center, Charleston, Kanawha
County, West Virginia at 10:05 a.m.

REBECCA L. BAKER
Certified Court Reporter
P.O. Box 7822
Cross Lanes, West Virginia 25356
Phone: (304) 759-2471

ORIGINAL

Attending Reporter: Philip S. Dye, C.C.R.

APPEARANCES

FRED TUCKER (Presiding)
GENE F. BAILEY
PAUL THOMPSON
DAVID HARRIS
EVERETTE SULLIVAN (Attending by Telephone)

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1 MR. TUCKER: I'd like to call this
2 public hearing to order for Series I, is that right,
3 Mr. Suter?

4 MR. SUTER: It would be 96-CSR-1.

5 MR. TUCKER: 96-CSR-1. Has everyone
6 had an opportunity for the ones who want to speak to
7 sign this sheet? I've got three names as visitors,
8 and no one has put down that they want to speak.

9 MR. PRICE: Excuse me, sir. I did not
10 sign in.

11 MR. TUCKER: Here you are, sir.

12 MS. HANSON: Mr. Tucker?

13 MR. TUCKER: Yes, ma'am.

14 MS. HANSON: Not to speak, but just a
15 question. You'll still have public comment at the
16 end of it? Because after they explain what they
17 intend to do, I may have some questions.

18 MR. SUTER: If I may, this is a public
19 hearing, not a meeting of the Performance Council,
20 but a public hearing to receive comment with regard
21 to the proposed rule, and that's exactly what I

1 believe the Committee is going to do, is receive all
2 the public comment, and note that the deadline is
3 the end of the day for filing written comments.

4 MR. TUCKER: Thank you, sir. I will
5 make -- Mr. Suter, if I make some statements that
6 are not true, use your legalese -- my understanding
7 is that this rule has been out for public comment,
8 and today at 5:00, the close of business, is the
9 written comment deadline. We're going to -- if
10 anyone here today wants an opportunity to have
11 verbal comments, they can also have written comments
12 as long as they're received by the end of business
13 today.

14 We're going to have someone from the
15 Division to give a brief synopsis of the rule, and
16 my understanding is, after all the comments have
17 been received, both oral and written, that they're
18 going to be sent back, sent to the Division, and the
19 Division, in a regular meeting of the Finance
20 Committee, they will make their recommendations
21 after receiving the public and written comments as

1 to whether any changes in the proposed rule that
2 they have, is that correct, Mr. Suter?

3 MR. SUTER: Yes sir, once the Division
4 receives all the comments, it prepares a response to
5 the comments that is taken up in the particular
6 committee meeting, in this case it would be the
7 Finance Committee. I would note, Ms. McLaughlin is
8 the person that you would need to address the
9 written comments to and the Division's fax number
10 for the Legal Services Division is 558-6101, and
11 that would be the number, if you're pushing close of
12 business today on making your comments, that would
13 be the appropriate course of action, I believe.

14 MR. TUCKER: It's my understanding --
15 now I'll let you tell us on your time frame, the
16 next meeting of the Finance Committee, which this
17 rule was assigned to, is scheduled for Tuesday, the
18 16th of November at 10:00 a.m. here at the Civic
19 Center. Now would that give you enough time to get
20 the comments and be prepared to make a response back
21 to the Finance Committee at that time?

REBECCA L. BAKER, C.C.R.
(304) 759-2471

1 MS. McLAUGHLIN: Yes.

2 MR. TUCKER: That being said, what we
3 will do then, Mr. Suter, is just schedule on the
4 agenda for the Finance Committee Ms. McLaughlin to
5 give the Division's, or whoever she may designate, a
6 written comment provisions of this rule, and that
7 will be presented to the Finance Committee at their
8 next regularly scheduled meeting.

9 I would just like to notify everyone
10 that this is a recorded meeting, and if you have
11 anything you would wish to say, we would like to
12 come to the podium, identify yourself so you can be
13 recorded. The first thing we're going to do is,
14 we're going to ask Ms. McLaughlin, if she would, to
15 come and give us a synopsis of the rule as the
16 Division sees it. If anyone needs a copy of the
17 rule, you might want to see Ms. McLaughlin to make
18 arrangements to, if she has any extras with her, to
19 get one, or make arrangements for one to be mailed
20 to you. With that, we'll turn the first speaker
21 over to Ms. McLaughlin.

REBECCA L. BAKER, C.C.R.
(304) 759-2471

1 MS. McLAUGHLIN: Can everyone hear me?
2 Title 96, the Exempt Legislative Rule, Bureau of
3 Employment Programs, Series One, is a rule
4 implementing the requirement that prohibits State
5 agencies from granting, issuing or renewing
6 contracts, licenses, permits, certificates or other
7 authority to conduct a trade, profession or business
8 to or with any employing unit who is in default with
9 regards to Unemployment Compensation or Workers'
10 Compensation.

11 The scope of the rule is as follows;
12 the Legislative Exempt Rule was intended to set
13 forth the procedures establishing the implementation
14 of the provisions of West Virginia Code §21A-2-
15 6(18), which prohibits State agencies, defined as
16 any unit of State Government, such as officers,
17 agencies, divisions, departments, boards,
18 commissions, authorities or public corporations from
19 granting, issuing or renewing any contract, license,
20 permit, certificate or other authority to conduct a
21 trade, profession or business to or with any

REBECCA L. BAKER, C.C.R.
(304) 759-2471

1 employing unit whose account is in default with the
2 Commission of the Bureau of Employment Programs with
3 regard to the administrations of Chapter 21A, which
4 is the Unemployment Compensation Code or 23 of the
5 West Virginia Code, which is the Workers'
6 Compensation Code.

7 The rule means what it says, that if
8 an applicant of a business is in default, who does
9 business with a State agency, is in default, that
10 they are put on a list and that you cannot grant
11 them a permit or a certificate or a license.
12 Default, for purposes of the administration of
13 Chapter 23A of the Code, or the Workers'
14 Compensation part, means being in default as
15 provided in West Virginia Code §23-2-5d.

16 For the purposes of the administration
17 of Chapter 21A of the Code, employers in default,
18 when after due notice, the employer fails to submit
19 a required payment, interest thereon or penalty and
20 has not entered into repayment agreements with the
21 appropriate divisions of the Bureau or has entered

REBECCA L. BAKER, C.C.R.
(304) 759-2471

1 into appropriate repayment agreements but does not
2 remain in compliance with this obligation under the
3 repayment agreements, now that is unemployment.

4 After due notice, the employer fails to submit a
5 required payment, then they're in default.

6 Repayment agreements are agreements which can be
7 signed, once an employer knows they're in default,
8 can be signed saying they will pay so much every so
9 many years to come back into compliance. That is
10 what a repayment agreement is. And repayment
11 agreements, both unemployment comp and workers'
12 comp, they both have the payment agreements.

13 Grant and issue, those terms include
14 not only the original issuance or granting of an
15 approval document, but also any transfer, assignment
16 or sale of a document if otherwise allowed. The
17 list that is supposed to have the companies which
18 have defaulted, they are subscribers -- the list
19 contains subscribers to either the Division of
20 Unemployment Compensation or Workers' Compensation
21 who are in default. The list, which will be created

1 by the appropriate division of the Bureau, may be
2 proposed to the agency in the form of a computerized
3 database or databases that the agency can access.

4 The term, review, when you review a
5 list, means either to query a computerized database
6 to determine if the applicant is identified as a
7 default or to determine whether the applicant's name
8 is included on the list of employers in default
9 proposed by the appropriate divisions of the Bureau
10 of Employment Programs.

11 That is my summary. In essence, what
12 this rule does is, it allows for persons or people
13 who do business with the State who are paying in
14 Workers' Comp. or Unemployment Comp. to have the
15 benefit of State contracts versus those who are
16 continuously in default or who have defaulted who do
17 not desire to try to make repayment of what they owe
18 the State. Thank you.

19 MR. TUCKER: Does anybody have any
20 questions of the panel or Ms. McLaughlin?

21 MR. BAILEY: Ms. McLaughlin, we were

1 provided with some responses from some of the
2 agencies today which you may have seen or may not
3 have. I know Mr. Suter just received them himself,
4 but in your response to the Finance Committee on the
5 16th of this month, you will respond to these
6 concerns as well as the other individuals that may
7 be here today?

8 MS. McLAUGHLIN: Yes, sir. I will not
9 personally respond to those concerns, but I will get
10 with the appropriate people to see how the Division
11 wants to respond to those concerns, then we'll
12 present their response to the Performance Council.

13 MR. BAILEY: Okay. And the reason I
14 asked that, one here from the Department of Health
15 and Human Resources really puzzles me. They're
16 basically saying that there's going to have to be an
17 exception provided for ABA, a sole vendor of
18 services or whatever, that they have contracts with
19 --

20 MS. McLAUGHLIN: Mr. Bailey, I think in
21 regards to that, with the comments, we hope that

1 most of these comments are constructive. That means
2 if they have something negative to say, they can
3 find a solution to make it work with the rule. As
4 stated in the pub, this rule can be implemented in
5 phases, and I think that when the Legislature passed
6 this rule implementing parts of the rule in phases,
7 allows flexibility within the rule for exceptions to
8 the rule, but I will get with the appropriate
9 persons and we will discuss their comment.
10 Hopefully, you know, just saying they want
11 exceptions, maybe why is the exception and why
12 should it be an exception versus something else and
13 how the exception should work, maybe in regards to
14 the phases. It's something, I guess, we can put our
15 heads together on and try to come up with a solution
16 to.

17 MR. BAILEY: It almost appears you've
18 communicated with them, because they talk about
19 phasing, so you're on the right track or you
20 understand what needs to be done.

21 MS. McLAUGHLIN: I haven't seen it, but

1 the Commissioner requested that I call all State
2 agencies to make sure they got their comments in, so
3 I was on the phone to all State agencies asking them
4 for their comments telling them that today at 5:00
5 is the deadline, and so I did this last week, and I
6 hope that everything can be worked through.

7 MR. BAILEY: Thank you.

8 MR. TUCKER: Anyone else? Mr. Suter?

9 MR. SUTER: If I may make an additional
10 comment to supplement Ms. McLaughlin's comments, not
11 only did she call everyone, but she had advised,
12 through the Commissioner's office, all of the
13 cabinet Secretaries about -- the Governor's cabinet
14 Secretaries -- about this ruling, provided them a
15 copy to distribute to their respective agencies.

16 MS. McLAUGHLIN: It also is on the
17 Internet.

18 MR. TUCKER: Mr. Sullivan, are you
19 still with us, sir?

20 MR. SULLIVAN: Yeah, I'm okay.

21 MR. TUCKER: Okay. Mr. Boone, is that

1 your name?

2 MR. PRICE: Harry Price.

3 MR. TUCKER: I beg your pardon, sir. I
4 don't read too well.

5 MR. PRICE: Good morning. My name is
6 Harry Price, I'm Executive Secretary for the West
7 Virginia Division of Natural Resources. The first
8 question I have is, has our agency's comments been
9 received? Is that part of your package? We hand-
10 carried them to the Division on Friday.

11 MR. TUCKER: Mr. Price, what we have
12 received, according to what was handed to the
13 Committee, was the State Tax Department and
14 Department of Health and Human Resources.

15 MR. SUTER: Ms. McLaughlin also
16 received a couple of other comments that --

17 MR. TUCKER: She's probably got those -

18 -

19 MS. McLAUGHLIN: I have a copy -- I
20 received them on Friday, and I skimmed through them,
21 but I have copy of them, because we'll have another

1 meeting when we get all the comments.

2 MR. PRICE: But for the record then,
3 they have been received?

4 MS. McLAUGHLIN: Yes, sir.

5 MR. PRICE: Thank you very much. The
6 major question that our agency has is a matter of
7 interpretation of the proposed rule. As I read it,
8 I read it very liberally, and interpreted it
9 broadly. Our attorney has limited its
10 interpretation. Please let me refer to 96-1-1,
11 paragraph 1.1 under Scope, and I will read --
12 ...agencies, divisions, departments, boards,
13 commissions or authorities or public corporations,
14 from granting, issuing or renewing any contract,
15 license, permits, certificate or other authority to
16 conduct a trade, profession or business to or with
17 any employing unit whose account is in default with
18 the Commissioner of the Bureau of Employment
19 Programs.

20 The attorney for the Division of
21 Natural Resources whose comment is included in our

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1 response has interpreted that narrowly in this
2 sense; that my comments early on were, the term
3 contract meant any purchase order that the agency
4 may issue for any amount to any vendor doing
5 business with a State agency. The attorney, in his
6 comments, our attorney, Dana Jividen, has
7 interpreted it to mean only where -- the scope only
8 refers to where this agency, the Division of Natural
9 Resources, has the authority to -- oversight
10 authority for a corporation to do business within
11 the limits of our boundaries, i.e., we oversee the
12 white water rafting industry. We issue permits for
13 people to do business as a hunting and fishing
14 license agency, or we issue a permit, the Director
15 issues a permit for someone to be a taxidermist,
16 just as examples.

17 My interpretation was this, that any
18 purchase order issued in any amount, and I'm asking
19 for clarification at this time as to, is it only for
20 the oversight of conducting business with the State
21 or is it where an agency is contracting for business

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1 to buy a cassette, computer cassettes?

2 MS. McLAUGHLIN: You're asking?

3 MR. PRICE: Yes. That's what I'm
4 asking.

5 MS. McLAUGHLIN: It does not state in
6 the statute whether -- it doesn't limit it. It
7 says, -- it's for granting, issuing or renewing any
8 contract, license, permit, certificate or other
9 authority to conduct a trade, profession or
10 business, so yes, if you look at that as conducting
11 business, to or with any employing unit, the
12 designated agency shall review a list of lists
13 provided by the appropriate division of the Bureau
14 of employers that are in default, if the employing
15 unit's name is not on the list, so you go to the
16 definition of employing unit, an employing unit --
17 employing unit means, in an individual or type of
18 organization including any partnership, association,
19 trust estate, joint stock company, insurance
20 company, corporation, domestic State or political
21 subdivision thereof or their instrumentalities, and

1 then it goes on -- it goes on, and it talks about
2 employing unit here, if their name is not on the
3 list, the agency, unless it has actual knowledge
4 that the employing unit is in default with a
5 division of the Bureau, may grant, issue or renew
6 the contract, license, permit, certificate, other
7 authority to conduct a trade, profession or
8 business.

9 We have not defined business.

10 Business would be, I imagine when you contract the
11 State for money because your business wants money
12 and you do business with them, you provide a service
13 to them in return for them paying you a sum of
14 money. And that's how the Code, 21A-2-6(18) defines
15 this. Okay, and that was passed by the Legislature,
16 so --

17 MR. PRICE: My concern is that with the
18 new purchasing card system that has been implemented
19 to speed up payments to vendors to eliminate
20 paperwork, anything under \$1,000.00 can be purchased
21 with a purchasing card. It's a VISA card, so how

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1 are these people out in the field to know when
2 they're going somewhere to buy something for \$10.00,
3 \$1.50, \$200.00 --

4 MS. McLAUGHLIN: I think the answer to
5 your question will take place when the nature of the
6 list is discussed. The list is supposed to come out
7 quarterly, because you can't be in default until the
8 end of a quarter for payment, so the list would have
9 to come out at the end of a quarter, so anyone
10 that's not in default by the end of a quarter and
11 they're not on the list, you'd wait till the next
12 quarter to see if they're in default. So I think
13 that comes out with the list, and then you also have
14 to look at the nature of what a default and what a
15 deficiency is.

16 Most of these people get notices if
17 they're deficient before the end of the quarter so
18 that they can make up or do something about it.

19 MR. PRICE: Typically, how long is a
20 list, just out of curiosity?

21 MS. McLAUGHLIN: You'd have to ask

1 either Mr. Wolfenbarger or Mr. Click. I don't know
2 how long -- Unemployment keeps lists. He could
3 probably address that.

4 MR. WOLFENBARGER: I'm Wade
5 Wolfenbarger, with Unemployment Compensation.
6 Typically on our list, the length of employers would
7 probably run around 4,000 names.

8 MR. PRICE: So even if it comes out
9 quarterly, the magnitude of the memorization problem
10 is extreme for someone out in the field, especially
11 if they don't have computer access at any time or to
12 carry around a volume of paper with them to know
13 what stores, what Ma and Pa groceries they can --
14 stores that they can go buy something, or a hardware
15 store, wherever they can buy -- those are our
16 concerns. If the liberal interpretation of contract
17 is anyone you're doing business with versus
18 permitting, the ability to permit someone to do
19 business within the regulatory function of the
20 definition versus the issuance of a purchase order -
21 - I hope I'm making myself clear.

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1 MR. BAILEY: Mr. Price, could I ask a
2 question, and it doesn't need to be answered today.
3 It's probably for Ms. McLaughlin mostly, but I think
4 what I heard you say, you have individuals or there
5 are individuals out in the field for the Department
6 of Natural Resources, and they may or may not choose
7 to purchase something, and under the interpretation
8 now of contract, it appears that that would fall
9 under the scope of this rule, that's correct, right?

10 MR. PRICE: Yes, sir.

11 MR. BAILEY: You have a concern that
12 those people have got to look at a list of 4,000
13 before they can use that VISA card or that credit
14 card that they have to make a purchase because that
15 might in fact be construed as a contract by the
16 Department of Natural Resources?

17 MR. PRICE: By the statute.

18 MR. BAILEY: By the statute, I'm sorry.
19 And I'm not saying that that needs to be addressed
20 or answered today. I think maybe Ms. McLaughlin
21 could answer that later along with the others,

1 although I know you would like an answer, but --

2 MR. PRICE: What I was looking for was
3 the clarification or at least to get this point
4 across, if that is the broad interpretation.

5 MR. BAILEY: And I would like to know
6 the same. Thank you.

7 MS. McLAUGHLIN: We'll take that under
8 advisement. I'll have to discuss that with other
9 agency heads, how to deal with this type of
10 situation. But on the length of the computer list,
11 that's really, in my opinion, a wrinkle in the
12 statute, because in today's time computer people can
13 flag stuff. You can program -- I used to be in
14 programming -- you can program stuff to put
15 agencies' codes on it if you can somehow trigger the
16 list and maybe narrow that list down. The MIS
17 people could do it, but I can remember when I worked
18 for MCR and a few of the other agencies, we could
19 flag stuff. We could sort things out if they
20 belonged to a certain agency. We had to have a
21 symbol or indicator of what type of business that

1 business does with which agencies, but once you get
2 it on line, if you take information on their
3 application, then it could be done.

4 But the other -- I really -- we really
5 haven't defined business. Business is very broad,
6 so I would have to see what the other agencies'
7 heads, how they want to define it, the Performance
8 Council, what they think about it, you know, before
9 I could come up with an answer, but things can be
10 done in phases according to the statute. It doesn't
11 have to be immediately, it can be done in phases, so
12 that's another thing to take into consideration.

13 MR. PRICE: The other comment that the
14 agency submitted was written by our Chief of
15 Environmental Resources, Emily Fleming, and her
16 question was that the Code of this statute, 21A-2-6
17 provides a procedure allowing any agency or
18 interested party, after being covered under the
19 rules for a least a year, to petition the Council to
20 be exempt from the provisions of the rule. Ms.
21 Fleming, in reading the rule, did not see this

1 provision included.

2 MS. McLAUGHLIN: It's in there.

3 MR. PRICE: It's in there?

4 MS. McLAUGHLIN: Yes, sir. I'll --
5 it's -- I found it. I read the comment. I found
6 where it was. It's under 96-1-9, Procedure for
7 Petitioning for Exemption. After being subject to
8 this rule for at least 12 months, an agency or any
9 other interested person may petition the Council,
10 meaning the Performance Council, to be exempt from
11 the provisions of this rule.

12 MR. PRICE: Thank you very much. Thank
13 you very much, Mr. Chairman.

14 MR. TUCKER: Anybody have any questions
15 of Mr. Price?

16 (No response)

17 MR. TUCKER: I've got a couple, Mr.
18 Price, before you leave, if you would. DNR has what
19 scope, they deal with quite a different --
20 whitewater rafting, mining and the whole nine yards?

21 MR. PRICE: No mining.

1 MR. TUCKER: No mining?

2 MR. PRICE: That's the Department of
3 Environmental Protection.

4 MR. TUCKER: You don't have anything to
5 do with pollution of streams or anything of that --

6 MR. PRICE: We have no regulatory
7 function in the environmental area.

8 MR. TUCKER: All right. Thank you.

9 MR. PRICE: We were made devoid of that
10 in 1992 when environmental -- energy and the
11 environmental regulatory functions of DNR were
12 combined into the Department of Environmental
13 Protection, which is now the Bureau of Environmental
14 Protection, I believe.

15 MR. TUCKER: Okay. The way I interpret
16 this rule, it would be your responsibility for
17 people who are renewing their certificate or
18 license, permit or whatever it may be, whether it be
19 to do with whitewater rafting or taxidermist, they'd
20 have to -- you'd have to make sure that under this
21 rule that they would not default with the Bureau of

1 Employment Programs, is that correct?

2 MR. PRICE: That was the question that
3 I originally raised.

4 MR. TUCKER: I understand what you
5 said, excuse me for interrupting, that you've got
6 people with credit cards in your Division going out
7 and they need some supplies to do a job, say it's
8 \$100.00, they go and buy that from Mom's little
9 hardware store?

10 MR. PRICE: That's correct.

11 MR. TUCKER: But what I'm talking about
12 is, if I'm in business and I have to have a
13 certificate or a license or a permit from you to do
14 that business, it would be your responsibility to
15 verify that I am up to snuff with these two -- the
16 Bureau of Employment Programs?

17 MR. PRICE: Yes, sir.

18 MR. TUCKER: Okay. What kind of a
19 problem do you envision with that for your Division?

20 MR. PRICE: None whatsoever. We should
21 be able to -- in that part of it, we should be able

1 to take the quarterly listing provided to people
2 within our central office or access to computer
3 screens, as long as we can do a central, the major
4 problems we have is, not everyone in DNR is wired.
5 Like in management areas out in Handley, up in
6 Pocahontas County, we don't have computers out
7 there. Some of our parks don't have access to the
8 Internet yet, so we can't get -- they can't access
9 the information via the Internet, but we'd have to
10 provide hard copies.

11 MR. TUCKER: That'll help me out very
12 much. Thank you very much, sir.

13 MR. PRICE: We also have contractors,
14 too, that we do provide such people to provide food
15 service at parks or State -- horseback riding,
16 things like that, so we would make sure that they
17 are up to date before we would allow -- renew our
18 contracts, annual contracts with them to provide
19 that type of service at parks, for instance.

20 MR. TUCKER: Thank you, sir. Anyone
21 else have any questions for Mr. Price?

1 (No response)

2 MR. TUCKER: Thank you very much. Is
3 there anyone else that wishes to address --Ms.
4 Hanson?

5 MS. HANSON: My name is Pauline Hanson,
6 I'm with the Affiliated Construction Trades, and I
7 know when Ms. McLaughlin's talking about a default
8 list, you're putting that out every quarter. Say on
9 the first half of the quarter, if they contract with
10 that company, they're in default at that time, then
11 they go back to repayment --

12 MS. McLAUGHLIN: I'm sorry, could you
13 repeat that? I'm sorry.

14 MS. HANSON: On the default list, what
15 happens is, they may be in good standings when you
16 issue the contract --

17 MS. McLAUGHLIN: Right.

18 MS. HANSON: -- Okay, then at the end
19 of that quarter, but this contract may last for a
20 year. At the end of that quarter, they could go
21 into default, so what do they do in the middle of

1 the stream?

2 MS. McLAUGHLIN: Are you talking about
3 Workers' Comp.?

4 MS. HANSON: Yes.

5 MS. McLAUGHLIN: Workers' Comp., if
6 you're in default, once it's determined you're in
7 default, according to the Code that I just read, you
8 have six months to try to make a repayment or you
9 can get into a repayment agreement that takes you
10 over that year in which, if you can't afford to make
11 a lump-sum, but you get it on some kind of repayment
12 plan to pay it all back, you can go that route. Now
13 if they try not to cure the default, we have an
14 amnesty program, I think, that ends in July. If
15 they try not to cure the default at all, then they
16 won't get the next contract.

17 MS. HANSON: Right, they won't get the
18 next contract, but before they entered into that
19 contract, that contract, such as the building of
20 these parks and so forth --

21 MR. PRICE: And hotels and bridges --

1 MS. HANSON: Right, they take a long
2 time. This default list bothers me because I try to
3 get the default list -- even though they enter into
4 a repayment agreement, which I was in Circuit Court
5 last week. A company had entered into repayment but
6 failed to live up to their duty, but there's still
7 work.

8 MS. McLAUGHLIN: I think what we're
9 going to have to do is take this under advisement.
10 When you have contracts that span three years or
11 contracts that span four years and they become in
12 default, do they shut down and you can't renew the
13 contract? I mean, what do you do? What is the
14 contractual basis? How is the contract written? Is
15 there a loophole where if they become in default
16 what's going to happen? A lot of this deals with
17 contract law and how that contract is written, if
18 they do become in default with Unemployment or
19 Workers' Comp, so I think I'm going to have to get
20 back with the higher ups to figure out how that's
21 going to be handled, because I don't have the answer

1 myself. That's the purpose of the comment period,
2 is to find out what we need to talk about and how to
3 make the rule more effective and a lot of things,
4 you know, contract law is, how is that contract
5 written and what is permitted by the contract and
6 what is not permitted by the contract, so I would
7 assume that that contract would be good as long as
8 they try to cure the default or try to make their
9 payments to workers' comp., but I don't know how the
10 contracts are written, and this needs to be
11 discussed with the Division, and on the 16th when we
12 come back to the Performance Council, address it
13 more fully, because I don't have authority to speak
14 on it, really.

15 MS. HANSON: Well, I know in Purchasing
16 I think before you issue a purchase order, and I
17 think someone from Purchasing should have been here,
18 and I think, Randy, I mentioned that before when she
19 spoke on letting the environmental companies to be
20 exempt because if that was a hazard or whatever, and
21 I don't know what happened to that. Are they exempt

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1 or --

2 MS. McLAUGHLIN: No.

3 MR. SUTER: Let me respond to your
4 first statement. We had notified all of the cabinet
5 secretaries, and Ms. McLaughlin talked to agency
6 heads with regard to this rule. We don't have any
7 authority to bring somebody in and make them make
8 comments, so they should have been notified and be
9 aware of this particular rule.

10 MS. HANSON: I think maybe this is
11 where someone needs from the Performance Council or
12 whosever (sic) duty it is, that you have a duty to
13 comply with the law, whether it be Purchasing,
14 whatever it might be. You're a State agency.
15 Someone from the Tax Department could be here, and
16 then if they have questions, that's fine, because I
17 find them every day, some have a tax license and
18 business license, some don't. Some don't have any
19 workers' comp., some are millions of dollars in
20 debt, but once you issue that contract and it goes
21 for a period of two years and then you find they're

1 in default and you try to cancel that contract, and
2 you're going to wind up with a payment fee, even
3 though they knew they shouldn't. I think that they
4 should designate someone from the Division or
5 whoever issues the contract to call the Division,
6 both Divisions. If they're in good standing at that
7 time, issue the contract, but then in two months or
8 whatever, then they should also be made to send in a
9 compliance of good standings, because as Angie
10 Shepherd told you before, it could take nine months
11 before you catch the contractor or the vendor, and
12 then they're gone. It's too late then, and that's
13 part of our problem now. Thank you.

14 MR. BAILEY: Ms. Hanson?

15 MS. HANSON: Yes.

16 MR. BAILEY: I agree with you
17 wholeheartedly. I think that somehow something
18 should be written in that this approval of this
19 certification or this license is contingent upon you
20 continuing to remain in good standing, and it should
21 be monitored at least every quarter or whatever. So

1 I would propose something like that, because you and
2 I don't always agree, but --

3 MS. HANSON: Yeah, but sometimes we do.

4 MR. BAILEY: Yeah, sometimes we do.

5 MS. HANSON: But I don't think there
6 should be any exemptions to the rule. Everyone has
7 to live by the same rules and that's it.

8 MS. McLAUGHLIN: Ms. Hanson, if you'll
9 remember, at the last Performance Council meeting
10 when the administrator presented his discussion on
11 exempting a large number of companies, Mr. Epps
12 said, I'm sorry, the statute applies across the
13 board. So -- and if you see, there's not an
14 exemption in here for them. If you look at the rule
15 --

16 MS. HANSON: For the reclamation?

17 MS. McLAUGHLIN: For the reclamation.

18 MS. HANSON: Yeah, you had wanted that
19 part exempt because you said it might be a hazard.

20 MS. McLAUGHLIN: Well, the reclamation
21 argument was that federal law makes them reclaim,

1 you know, due to the reclamation. In other words,
2 no one -- they wanted to fulfill their duty
3 according to the reclamation in the strip mining,
4 and then maybe they won't get the next contract if
5 they're defaulted, if they haven't cured it by then.
6 But I think the other guy, the -- I forget his name,
7 I apologize, but he was talking about the John Amos
8 plant, and the John Amos plant having to
9 automatically shut down, but in 9.4 of the rule, if
10 you look at the rule -- in 9.4 it says, within the
11 Division of Environmental Protection this provision
12 will apply to new environmental approval documents
13 and transfers of existing environmental approval
14 documents. Renewal permits, modifications,
15 closures, certificates, abandonments, reclamation
16 activities and any other activity which may place
17 human health or the environment at risk if the
18 needed approval document is not issued will be
19 exempt from this requirement. Now that's placing
20 health at risk. That may be something that also
21 needs to be discussed more in depth, but it is in

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1 there. It's one of the things that he came up with
2 generally and then he got more specific and wanted
3 the Performance Council to do more, and so he put in
4 this 9.4, and that is, if something is something
5 they place human health or the environment at risk,
6 or the environment at risk, therefore human health
7 is at risk if a needed approval document is not
8 issued, will be exempt.

9 It's a loophole. I can't imagine, it
10 may be a really bad chemical -- something to do with
11 chemical pollution in the air that would cause a
12 high number of cancer, I don't know. But that is --
13 that part may be discussed more in depth. But that
14 one point when he was trying to get a number of
15 businesses exempt, the answer was no, it applies
16 across the board.

17 MS. HANSON: When you're talking about
18 -- I heard you talk about transfer, sale and assign
19 --

20 MS. McLAUGHLIN: In 9.4, that was the
21 way he had worded it, and we just put in what he had

1 worded. 9.4 will apply to new environmental
2 approval documents and transfers of existing
3 environmental approval documents. Renewal permits,
4 modifications, closures, certificates, abandonments,
5 reclamation and any other activity which may place
6 human health or environment at risk if a needed
7 approval document is not issued will be exempt from
8 this requirement.

9 MS. HANSON: Well, I have some
10 problems, and also too, any big construction project
11 that is tackled first must go through and get their
12 NPDES permit. I think they should be notified and
13 they should also be provided with this list, and if
14 you happen to be on that list, then you don't get
15 your NPDES permit, that's your first stop.

16 MS. McLAUGHLIN: That's right.

17 MS. HANSON: Then there's the control
18 sediment permit, there's a lot of permits that are
19 issued out there, and they're big projects.

20 MS. McLAUGHLIN: Well, if they're in
21 default they can't get the permit.

1 MS. HANSON: Right, if they're in
2 default on that list at that time, but what I'm
3 saying is, these are good for five years, so whoever
4 needs to monitor this in between the times, just
5 like Mr. Bailey said, they get a mining permit, it's
6 good for five years, and there's nothing you can do
7 about it.

8 MS. McLAUGHLIN: The way you handle
9 that is through contract law, and when you write the
10 contract with them you have something in there that
11 says if they become in default, that this rule
12 applies or kicks in. Now you can do it in phases,
13 but that deals with contract law also and what the
14 contract says, and you don't want to have a conflict
15 with the contract law and this statute, so you would
16 figure out a way -- as I said, we talked about this
17 before, when you have a contract for five years, ten
18 years, three years, two years, if they become in
19 default how do we handle it, and I have to talk to
20 the higher ups because I don't know how they want to
21 handle it and it needs to be addressed at the

1 Finance Council meeting on the 16th.

2 MS. HANSON: Well, I think the
3 Commissioner needs to take some kind of stand on
4 these in saying, you know, now there is notices from
5 the DEP, an inspector can go out and he can give a
6 Notice of Violation, but your contractor, say in the
7 mining, your contractor is in default, you need to
8 get them off the property. Okay, you know, can he
9 get them -- he has a contract with them, so I think
10 there needs to be teeth in there to strengthen that
11 law, and I think Purchasing, NPDES -- because all of
12 this comes as one big thing. You have to have a tax
13 license, a business license, everything. Articles
14 of incorporation if you're a corporation, and on
15 this default list of checking it one time and then
16 letting it go if that contract runs for a year, two
17 years or three years --

18 MS. McLAUGHLIN: No, no, no, no, no.
19 You check it every quarter. Every three months the
20 list comes out and you check it, you check it and
21 you check it, and if they're on that default list,

REBECCA L. BAKER, C.C.R.
(304) 759-2471

1 you cannot, according to the statute, issue them a
2 permit, a license or a certificate, so it's not one
3 time a year, it's every quarter.

4 MS. HANSON: Yeah, but what I'm saying
5 is, your contracts, and as Mr. Price knows, on some
6 of your DNR contracts, they may go for two, three
7 years in building something such as the Stonewall
8 Jackson Lake up there. I didn't realize this until
9 last week, it started out as a State project. I now
10 find out that all of that will be handled by private
11 enterprise, even down to the boats, McCabe-Henley,
12 which I have nothing against McCabe-Henley, but all
13 of that, he is taking over completely. So how do we
14 handle this if he brings a contractor in?

15 MS. McLAUGHLIN: I think this needs
16 further discussion at the Performance Council
17 meeting on the 16th, because it can't be resolved
18 here.

19 MS. HANSON: Okay.

20 MS. McLAUGHLIN: And we need to look at
21 the comments and then go to the higher ups and then

1 do a presentation and then discussion.

2 MS. HANSON: Thank you.

3 MR. TUCKER: Anyone else?

4 (No response)

5 MR. TUCKER: I'd just like to say that
6 this rule -- I guess it was discussed previously, my
7 concern with the rule is, number one, whether the
8 Division can do -- I don't say this sarcastically,
9 do everything that the rule says, okay? I just
10 glanced at the three interagencies within the State
11 and they said they didn't have the manpower to do
12 their end of it. It would cause them some problems
13 manpower-wise and financially-wise.

14 It's like Ms. Hanson said, you cannot
15 give somebody a contract for two or three years,
16 they pay the first quarter and then their okay and
17 then the contract goes for three years, I think
18 you're going to have to put some teeth in there, and
19 you're going to have to something else, too, you're
20 going to have to make sure that the other
21 interagencies of State government that you're

1 relying on, that they can do -- because if I get --
2 if I'm over here and I have responsibility for -- no
3 disrespect to DNR, I'm over here in DNR and I've got
4 my job to do and I get something from Workers' Comp
5 and all my people are busy, now that's not being
6 sarcastic, that's just the way I see it happening.

7 MR. PRICE: Not at DNR.

8 MR. TUCKER: I didn't mean no
9 reflection --

10 MR. PRICE: I know, I know.

11 MR. TUCKER: I'm just saying that, to
12 give me a simple illustration, because I've got my
13 supervisor telling me what my main priority is in
14 the Tax Department or Human Resources, what it may
15 be, they get all my work done, and then I see it as
16 me -- why should I do Workers' Comp's work? See
17 what I'm saying? Why should -- I got a budget, I'm
18 running -- I'm short-handed, and why should I do
19 Workers' Comp's work? We need to make sure that we
20 can work together on this thing before we start it,
21 because I believe sincerely that if we implement the

1 rule, we don't have all the contingencies in the
2 same frame of mind, we're going to have a worse
3 situation than what we had before. So much
4 indecision.

5 I'll just say that, because that was
6 the same reservations I have, we had the gentleman
7 from DEP. Now I heard a report one time from DEP
8 said that they would be afraid to take some of the
9 reports from the Division and go out and shut down a
10 coal mine, a strip mine, underground mine, because
11 they might not have the right information, and then
12 that would make them liable -- you know, you shut
13 down an operation with 300 men working on it for two
14 or three days, you're talking a huge amount -- you
15 got to have -- in the vernacular, we've got to have
16 our stuff together before we do this. I have no
17 problem with doing the rule, but let's make sure
18 we're doing it together, that everybody can -- and I
19 think you need to -- I heard what you've already
20 done with the other agencies, but I think a special
21 effort has to be put forth that some meetings take

1 place with those people to understand what their
2 requirements is going to be before we do this with
3 them, because there's no sense doing it if we don't
4 have -- whatever the technical term is.

5 There's people now within the Division
6 sometimes has trouble with getting hooked up to
7 certain things, and we better make sure that we have
8 all the ducks in a row. I support the rule
9 wholeheartedly, because it gives the Division
10 something to work with. But you've got to have the
11 information correctly and you've got to have people
12 not have any reservations. If I'm over at the Tax
13 Department and I get a report from the Division, I
14 should have enough faith in that that I act on that
15 and if it's blocking a permit, blocking a license or
16 whatever it may be, I should do that. And I'll shut
17 up on that. That was my problem with the last time
18 they had the rule, and as I recall, the only people
19 that responded to the rule the last time, because
20 the key word was in it, was permit, was coal. We
21 had a couple of people from coal, that was the only

1 people that came, and there was a key word in there,
2 when you heard -- the word, permit, that's the
3 reason why coal came. It's no disrespect to coal,
4 they was wanting to make sure that there was things
5 -- they consider the permitting process too slow
6 now, they didn't want to add anything to it, that's
7 what their opinion is, but we've just got to make
8 sure we know what we're doing when we do this rule.

9 MS. HANSON: One other thing, Mr.
10 Tucker, too, when you're talking about coal, just
11 such as DNR, they have to stop and realize the stuff
12 on Stonewall Jackson is like a 15 million dollar
13 contract. The 15 million dollars, okay, McCabe-
14 Henley has this agreement with the State, he's the
15 one that hires the contractors, and so I think he
16 should be held responsible, he can bring them from
17 anywhere, everywhere. They don't have to have
18 Workers' Compensation if they bring their own
19 workers and so forth. Okay? So I just think
20 someone needs to, and you're not going to do that in
21 one year, two years. Maybe three years at the most

1 on some of these DNR projects.

2 MR. TUCKER: Anyone else have any
3 comments?

4 (No response)

5 MR. TUCKER: Once again, you have an
6 opportunity until the close of business today. We
7 normally consider that 5:00, to express any written
8 comments, and it's my understanding at the
9 conclusion of this hearing will be the end of the
10 public comment period. The rule will be addressed
11 again under the schedule of the Finance Committee on
12 the 16th, and that's when someone from the Division
13 will make a recommendation as to what they see the
14 comments from the Division have been derived from to
15 present to the Finance Committee at that time. Is
16 there any members of the Council have any questions
17 or comments?

18 (No response)

19 MR. TUCKER: Did I make any misnomer
20 about where we stand, Mr. Suter?

21 MR. SUTER: As far as I can tell, Mr.

1 Tucker, we're on track.

2 MR. TUCKER: Anyone else?

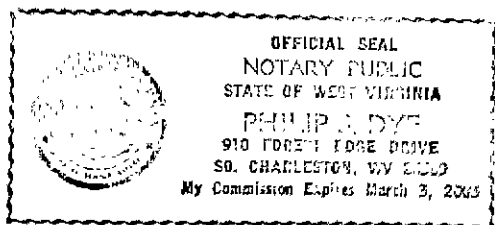
3 (No response)

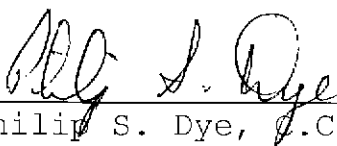
4 MR. TUCKER: Hearing none, I declare
5 the meeting closed, and thank you for your
6 attendance.

REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to wit:

I, Philip S. Dye, Certified Court Reporter and Subcontractor for Rebecca L. Baker, Official Court Reporter for the Bureau of Employment Programs, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all the proceedings as set forth in the caption thereof.





Philip S. Dye, C.R.
Notary Public



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
Division of Highways

Legal Division

Cecil H. Underwood
Governor

1900 Kanawha Boulevard East • Building Five • Room 519
Charleston, West Virginia 25305-0430 • 304/558-2821

Samuel G. Bonasso, P.E.
Secretary

Samuel H. Beverage, P.E.
Commissioner of Highways

Anthony G. Halkias
Director, Legal Division

October 29, 1999

Ms. Mary Blaine McLaughlin, Esq.
Legal Section/Federal Programs
West Virginia Bureau of Employment Programs
112 California Avenue
Charleston, West Virginia 25305-0112

Dear Ms. McLaughlin:

This will confirm my telephone conversation with you on October 27, 1999 in which I advised you that I have reviewed the proposed Title 96 Series I, which implements the requirement which prohibits agencies from granting or renewing contracts, licenses, certificates or other authority to conduct business with any employing unit which is in default in Unemployment Compensation or Workers' Compensation requirements.

As I advised you, the Department of Transportation believes this Rule is appropriate and should be implemented as written.

Very truly yours,

Anthony G. Halkias
Director, Legal Division

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AGH:dm

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LEGAL DIVISION



STATE OF WEST VIRGINIA
STATE TAX DEPARTMENT

CECIL H. UNDERWOOD
GOVERNOR

JOSEPH M. PALMER
COMMISSIONER

October 29, 1999

The Honorable William F. Vieweg, Commissioner
WV Bureau of Employment Programs
112 California Avenue
Charleston, WV 25305

RE: Comments of the Tax Department related to proposed rule, Title 96, Series 1

Dear Commissioner Vieweg:

This letter is an official written comment filed by the West Virginia Tax Department on the proposed legislative rule of the Bureau of Employment Programs, Title 96, Series 1.

The Tax Department is willing to assist State agencies in the effort to administer the laws of the State of West Virginia. However, implementation of the proposed rule through an Internet file interrogation process (as described in Bureau of Employment Program communications) will cause significant administrative hardships and compliance problems within the licensing and registration units of the Tax Department.

The proposed rule would require time consuming, labor intensive manual processing by the Tax Department. An automated match of Tax Department files against the proposed Bureau of Employment Programs Internet web page file cannot be done because the web page data will not be comparable to Tax Department file data.

The Bureau of Employment Programs Internet file will not contain Federal Employer Identification Numbers (FEIN) that would be necessary to identify a business listed on Tax Department files, but will not be on the web page. Indeed, there may be State and Federal tax information confidentiality issues which would prevent publication of FEINs on a web page.

We understand that the FEIN resides in the underlying Bureau of Employment Programs source file. Experience has shown that attempts at matching business names is not an effective methodology for searching Tax Department files because names and addresses must be exact matches in order for the automated process to match the files. Literally, a single letter or punctuation mark difference or a difference as to abbreviation will prevent a match. (John Doe versus John R. Doe; Inc. versus Corp.; Ltd. versus LP or LLP; avenue versus Ave. or Av.; street versus St., etc.) The Tax Department has long and voluminous experience at working with the business registration and tax databases, and name or address matching simply will not work over a multitude of large databases.

The amount of additional resources our agency would need to accommodate your proposed Internet matching process has not been fully determined, but it would be substantial. There are about ten (10) registration and licensing functions administered by the Tax Department. The Tax Department would be required to manually match your proposed Internet file against 170,000 current business registration

The Honorable William F. Vieweg, Commissioner
Page 2

files as well as certain other databases (for example, the charitable gaming licensure database). Although this letter comprises only the comments of the Tax Department, and does not address other Divisions of the Department of Tax and Revenue, we note that other Divisions of the Department of Tax and Revenue, for example, the Alcohol Beverage Control Commission, the Banking Commission, the Lottery Commission and the Insurance Commission, could experience more or less the same problem. The Tax Department would require additional employees and equipment and would incur substantial costs to implement your proposed rule as currently written.

The West Virginia Office of Business Registration (which was established to streamline the process of starting a business in West Virginia) will also encounter the same basic problem because Office of Business Registration files are essentially the same as the Tax Department registration and business tax files.

Tax Department data processing managers have examined the problem, and have a workable proposal involving electronic tape matches and other processes which will efficiently accomplish the objectives of the proposed rule and sections 21A-2-6c and 21A-2-6(18) of the West Virginia Code. With some coordination and planning, the Bureau of Employment Programs and the Tax Department can avoid most of the potential hardships and problems, and meet the objectives to be served with greater accuracy and speed than would be possible under the proposal as currently written.

The Tax Department hereby requests that the proposed rule be amended to permit the Bureau of Employment Programs and the Tax Department to adopt mutually agreeable means and procedures for automated review and matching of databases of the Bureau of Employment programs and the Tax Department.

We respectfully request that the rule be amended as follows:

Change the Title of section 96-1-9 to read as follows:


96-1-9. Procedure for petitioning for exemption, exceptions, procedures.

Add a subsection 9.5 to read as follows:

9.5 Notwithstanding other provisions of this rule, the Commissioner and the Tax Commissioner shall adopt mutually agreed procedures for automated review and matching of Tax Department databases with databases of the of the Bureau of Employment programs for implementation of sections 21A-2-6(18) and ~~21A-2-6c~~ of the West Virginia Code.

Thank you for the opportunity to offer comments on your proposal. If further information is needed to better understand the above offered comments, please contact Mark Morton, General Counsel for Revenue Operations for this Department, at 558-8730, Robert Hoffman, Director of the Tax Department Legal Division, at 558-5330 or Harold Powell, of the Tax Department Internal Auditing Division, at 558-8500.

Sincerely,


Joseph M. Palmer
Tax Commissioner

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OFFICE OF COMMISSIONER



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
ROOM 265, BUILDING 3, CAPITOL COMPLEX
CHARLESTON, WV 25305
(304) 558-8934

Cecil H. Underwood
Governor

Joan E. Ohi
Secretary

Date: October 5, 1999
To: Susan Settle
General Counsel
From: Larry Arnold, Attorney
Office of General Counsel *LA*
Re: Employment Programs Proposed Rule, 96CSR1

This is in response to the referral to you from Secretary Ohi requesting comments on the Bureau of Employment Programs' proposed rule entitled "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," 96CSR1.

My comments are mostly technical and are in sequence by section number of the proposed rule. Where I reproduce a provision of the proposed rule, I indicate my suggested deletions with strike-throughs and my suggested additions with underlines.

Generally, since §2.5 defines "Code" as the West Virginia Code, all the references in the proposed rule to the "West Virginia Code" should be shortened to the "Code."

§1.1. This subsection seems unnecessarily wordy. I suggest shortening it as follows:

1.1. Scope. - This legislative exempt rule ~~is intended to set~~

~~forth the~~ establishes procedures enabling the implementation of the provisions of West Virginia for implementing Code § 21A-2-6(18) which ~~that~~ prohibits agencies defined as any unit units 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~~ identified by 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 as being in default.~~

§1.2. In the first sentence, a double section symbol "§ §" should be in front of the first section number, and the section symbol should be removed from in front of the remaining section numbers.

The second sentence should be revised as follows:

Pursuant to ~~West Virginia Code § 21A-3-7(c)~~ 21A-3-7(c), rules ~~proposed by the Commissioner and adopted~~ approved 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.~~

§1.5. This subsection is unnecessary, but if it is included, it should be revised as follows:

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

§96-1-2. The introductory sentence could be shortened as follows:

~~As used in this rule,~~ The following terms and 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~~ the context clearly requires otherwise.

§2.3. In order not to use a word to define itself, the definition should be revised as follows:

2.3. "Application" means ~~application or other~~ a completed form or other document, including ~~a proposed contracts contract~~, seeking the issuance, granting or renewal of an approval document regardless of the name assigned to it.

§2.6. A double section symbol "§§" should precede the first Code section number.

§2.8. This definition repeats in the second paragraph some of what is in the first paragraph. The following revision may be clearer and shorter:

2.8. "Default" means:

2.8.a. Failure by an employing unit to submit required payments, interest, penalties or quarterly reports to the Commissioner by the due dates or failure to comply with any obligations under a repayment agreement; or

2.8.b. For purposes of the administration of chapter twenty-three of the Code, 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.~~

§2.10. The first sentence of the definition of "employing unit" was copied from Michie's publication of W. Va. Code §21A-1A-14 (which has an erroneous Michie Code reference in brackets). The definition needs the following revisions:

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 Code § 21A-1A-16(9)(B), 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 presumption of ownership or control contained in the Division of Environmental Protection's Surface Mining Reclamation Regulations promulgated under the provisions of Code § 22-3-1 of the West Virginia Code ~~are~~ is not applicable or controlling in determining the identity of employing units. ~~who are in default for the purposes of this subdivision.~~

§2.11. It is suggested that the definition be revised as follows:

2.11. "Grant" and "issue" include not only the original issuance or granting of an approval document but also any transfer, assignment, or sale, renewal, reissue, reinstatement, extension, amendment or other change of the document. ~~if otherwise, allowed~~

§2.12. The first sentence of the definition uses the word "subscribers" that leads to confusion. The second sentence of the definition is operational rather than definitional, and in light of §4.1, it is unnecessary. It is

suggested that the definition be revised as follows.

2.12. "List" means a paper or database identification of an employing unit that is in default.

§2.13. It is suggested that the definition of "person" be deleted and that "employing unit" be substituted wherever "person" is used.

§2.14. The second and third sentences of the definition of "repayment agreement" should be deleted, because they are operational rather than definitional. The substance of those sentences is already included in §96-1-5. Thus, the definition should be revised as follows:

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 of twenty-three of the Code, or both, but does ~~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~~ an agreement 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. Given other definitions, the definition of "review" can be shortened as follows:

2.15. "Review" means either to query a computerized ~~database to determine if the applicant is identified as in default~~ or the list 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.~~

§4.1. Given the suggested definitions of "list" and "review," the subsection may be shortened as follows:

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.

§4.3. Since this subsection requires a new review after the last review, reviews could go on forever. It is suggested that the subsection be revised as follows:

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

§96-1-6. For a logical sequence, §§ 6.2 and 6.3 should be renumbered as §§6.3 and 6.4 respectively, and the body of §96-1-7 should be added as § 6.2.

§96-1-7. Aside from the move described above, the numerical items should follow the normal numbering breakdown for rules. In what is now (1), delete "or employing unit."

§96-1-8. In the first sentence, the words "of going forward" are unnecessary. In the second sentence, the word "shall" should be changed to "may."

§9.4. Puzzling are the references to "this provision" in the first sentence and to "this requirement" in the second sentence. Assuming what is meant in both cases is "this rule": the substance of the first sentence is

unnecessary and should be deleted, because the rule is already made applicable to the Division of Environmental Protection by §96-1-3; and since the second sentence then contains an exemption from the applicability of the rule, the concept of the second sentence should be a new section headed "Exemptions." It may be that in some cases human health or the environment might be placed at risk unless the Division of Environmental Protection issues new environmental approval documents or transfers of existing environmental approval documents. Thus, it is suggested that the rule allow exemptions for such cases. It is also suggested that since the Division of Environmental Protection has the expertise to make such determinations of risk, that the rule provide for such determinations to be made by that Division. It is also suggested that similar provisions apply to the Division of Health as follows:

§96-1-10. Exemptions.

~~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.~~

Activities determined by the Division of Environmental Protection or the Division of Health to place human health or the environment at risk if an approval document is not issued are exempt from this rule.

§96-1-10. In light of W. Va. Code § 29A-3-18, a severability section is unnecessary.



DIVISION OF NATURAL RESOURCES

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Cecil H. Underwood
Governor

John B. Rader
Director

October 28, 1999

Mr. William Vieweg, Commissioner
West Virginia Bureau of Employment Programs
112 California Avenue
Charleston, West Virginia 25305-0112

Dear Mr. Vieweg:

Attached are comments regarding Title 96, Series I, implementing the requirements of West Virginia Code §21A-2-6(18).

These comments were prepared by various sections of the Division of Natural Resources. We submit them in response to your recent request and await your answer.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry F. Price".

Harry F. Price
Executive Secretary

HFP/mb

Attachments

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LEGAL DIVISION



Division of Natural Resources
Legal Counsel
State Capitol Complex
Building 3, Room 669
Charleston, WV 25305
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Darrell V McGraw, Jr
Attorney General

STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL

TO: Harry F. Price
Executive Secretary

FROM: Daynus Jividen *DJ*
Senior Assistant Attorney General

DATE: 5 October 1999

RE: *Proposed Rule: Bureau of Employment Programs*

In response to your 5 October 1999 memo: Your underlying assumption is incorrect. You state that the proposed rule requires state agencies "ensure that entities with whom we do business are in good standing with [Bureau of Employment Programs]." The proposed rule does not require an agency to monitor the BEP status of entities with which the agency does business (e.g., the purchase of commodities). The proposed rule requires agencies to monitor BEP compliance of those entities issued a "contract, license, permit, certificate, or other authority to conduct a trade, profession, or business . . ."

It seems to me the quoted phrase shows the intent of the proposed rule; *i.e.*, state agencies that license or permit persons or business entities to conduct business in the state must monitor the BEP compliance of those licensees or permittees before issuing or renewing the license or permit (e.g., commercial whitewater rafters; hunting and fishing licensing agents). The "conduct a trade, profession, or business" clause in paragraph 1.1 of the proposed rule prevents an expansive interpretation of the proposed rule such as the one suggested in your memo whereby a state agency would be required to check BEP compliance of each vendor to which an agency issues a purchase order.

I hope this answers your question. If not, feel free to get back to me.

DJ/bt

cc: Bernie Dowler
Col. James Fields
Emily Fleming
Cordie Hudkins

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LEGAL DIVISION




DIVISION OF NATURAL RESOURCES

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MEMORANDUM

Cecil H. Underwood
Governor

John B. Rader
Director

TO: Harry F. Price, Executive Secretary
FROM:  Emily J. Fleming, Chief
SUBJECT: Proposed Rule: Bureau of Employment Programs
DATE: October 18, 1999

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OCT 29 1999

LEGAL DIVISION

In response to your memorandum dated October 5, 1999 regarding the rule requiring "...agencies of the state not grant, issue, or renew 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...", I offer the following:

As stated in **Appendix B Fiscal Note for Proposed Rules 3. Objectives of these rules** "This rule is an attempt to meet the legislative requirements contained in WVA. 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". Perhaps, we could better understand the complexity of the task we will be handed if we knew what the "simple procedure" will be. Also, one may conclude that according to the fiscal note that the only agency impacted will be DEP; however, the rule indicates otherwise.

The Code also states "The rules shall provide a procedure allowing any agency or interested person, after being covered under the rules for at least one year, to petition the council to be exempt from the provisions of the rules". Unfortunately, I do not see this provision included in the proposed rule.

In closing, after legal counsel Daynus Jividen provides his opinion, I would recommend someone contacting a representative from the Bureau of Employment Programs to obtain additional information. Thank you for the opportunity to comment.

EJF:vsh



DIVISION OF NATURAL RESOURCES
Parks and Recreation Section
Capitol Complex, Building 3, Room 714
1900 Kanawha Boulevard, East
Charleston, WV 25305-0662
Telephone (304) 558-2764
Fax (304) 558-0077

Cecil H. Underwood
Governor

John B. Rader
Director

October 21, 1999

MEMORANDUM

TO: Harry Price, Executive Secretary

FROM: ~~COH~~ Cordie Hudkins, Chief

RE: Comments on Proposed Rule for Bureau of Employment Programs

Your comments in your October 5 memorandum on the above mentioned proposed rule is accurate. The burden of determining whether a business entity is in good standing with the BEP should not be placed on other agencies. This rule could create a bureaucratic bottleneck that would delay receiving equipment, constructing and repairing facilities and a myriad of other transactions. On one hand we are told to conduct park business in a more business like manner, and on the other hand the bureaucracy we deal with makes that a much more difficult task.

COH:dbp

cc: Ken Caplinger, Deputy Chief
Doug Baker, Business Manager

BUREAU OF
PARKS
OCT 29 1999
LEGAL DIVISION



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Office of the Secretary
State Capitol Complex, Building 3 Room 206
Charleston, West Virginia 25305
Telephone: (304) 558-0884 Fax: (304) 558-1190

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OFFICE OF COMMISSIONER

Joan E. Ohi
Secretary

Cecil H. Underwood
Governor

October 28, 1999

William F. Vieweg, Commissioner
Bureau of Employment Programs
112 California Avenue
Charleston, WV 25305

Dear Commissioner Vieweg: *B.II,*

Per your correspondence of September 20, 1999, attached are comments on 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."

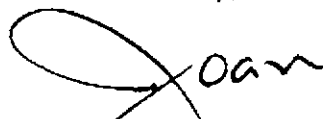
The Department has extensive comments on this rule. I would like to draw your attention to the most urgent among these comments which is as follows:

As the mission of the Department is to protect the health of all citizens, as well as provide medical and custodial care to the most vulnerable citizens of our state, the Department requests that Rule 96 be amended to include an exemption for health providers, providers of custodial services (i.e. foster care homes, group homes) and providers of services which are necessary for the protection of public health. The Department notes that such exemptions are not prohibited by the applicable section of the West Virginia Code.

At a bear minimum, the Department requests that BEP implement this rule according to West Virginia Code § 21A-2-6 (18) in phases, with health providers, providers of custodial services (i.e. foster care homes, group homes) and providers of services which are necessary for the protection of public health.

I appreciate the opportunity to comment on this rule. Should you have any questions or need further information, please contact Shana Phares of my staff at 558-3985.

Sincerely,


Joan E. Ohi
Secretary

JEO:skp

Attachments

**Comments from the Department of Health and Human Resources
on proposed Rule 96 (Title 96 - Series I)**

October 28, 1999

I. General Comments

The Department of Health and Human Resources (DHHR) agrees with the notion that government should be unified in its efforts to make certain that the individuals or entities with whom it interacts observe and are in compliance with the rule of the law. Further, the Department understands that the interest of the Bureau of Employment Programs (BEP) is to ensure that employers have adequate funds in their employment compensation accounts. This is similar to the mission of the Bureau for Child Support Enforcement (BCSE) which has a licensing revocation and denial process to sanction non-custodial parents in arrears on child support. BCSE must ensure that children receive adequate financial support from their parents.

II. Rule 96 places an undue risk on the most vulnerable citizens of West Virginia who may lose access to medical and custodial care due to the unilateral nature of the rule

On occasion, DHHR must contract for certain services or do business with providers who may be the sole entities either offering or performing such services. The potential for terminating a valued provider on the basis of that provider's noncompliance with BEP's programs and not on the grounds of inadequate performance may be grossly detrimental to the child or adult who benefits from the service. Withholding health facility licenses (which allow them to provide services to Medicare/Medicaid patients) could potentially jeopardize the health and safety of the citizens of West Virginia. Further, the fact that the Department is required to submit to Rule 96 for an entire year before it can petition for an exemption, does nothing to mitigate the harm caused to a child removed from an appropriate group home or an elderly adult moved from a non-compliant nursing home to a compliant one miles away from family or an injured West Virginia Works client who must travel miles farther for medical care because the local hospital is in bankruptcy reorganization and not compliant with workers' compensation payments.

As the mission of the Department is to protect the health of all citizens, as well as provide medical and custodial care to the most vulnerable citizens of our state, the Department requests that Rule 96 be amended to include an exemption for health providers, providers of custodial services (i.e. foster care homes, group homes) and providers of services which are necessary for the protection of public health. The Department notes that such exemptions are not prohibited by the applicable section of the West Virginia Code.

At a bear minimum, the Department requests that BEP implement this rule according to West Virginia Code § 21A-2-6 (18) in phases, with health providers, providers of custodial services (i.e. foster care homes, group homes) and providers of services which are necessary for the protection of public health.

III. Additional Administrative Burden and the Unfunded Mandate Implicit in Rule 96

The Department understands that Rule 96 attempts to follow the West Virginia Code, however, the rule as written, mandates untenable administrative and financial burdens upon the agencies. In brief these are as follows:

- 1) Rule 96 creates added responsibility on agencies to be a watch dog for BEP requiring valuable staff time.
- 2) It mandates other government agencies to start a reporting process for BEP diverting offices within DHHR from their vital mission of licensing and monitoring health service providers and care providers for quality and licensure compliance.
- 3) This rule can eradicate contractual relationships of other government agencies solely on the basis of BEP's interest. In the case of DHHR, this will impact the health and welfare of the citizens of the State, as detailed above.
- 4) It requires agencies to notify affected vendors of BEP's hearing process and requires the respective agencies to participate in hearings if the notice is challenged.

There is insufficient information included in Rule 96 for the Department to develop a fiscal note regarding the total expense of the rule implementation; however, each of the Department's five bureaus have expressed deep concern that this rule will have undue fiscal consequences for programs which are already strapped in terms of funding and staffing. The fiscal note developed by BEP omits the fact that all other agencies of state government will bear a fiscal burden to implement this rule. The Department requests that BEP make every effort to mitigate the administrative and fiscal burden of this rule.

IV. Rule 96 is vague in its requirements of agencies

The Office of the Department of the Inspector General notes that the degree of diligence required by state employees to ensure that the agency is in compliance with the rule is not described. Is a default status of a prospective provider/vendor available at all times? How and what mechanism will agencies use to access and determine default?

The Department desires a more detailed definition of default and the remedies. Are there other remedies available for use by the agency short of ending the contractual relationship in an effort to enforce compliance?

Rule 96 does not specify a dollar threshold for compliance, nor does it detail how agencies ensure compliance when using a state purchasing card.

The proposed rule does not state the consequences upon: 1) any contract license, permit or certificate which is granted, issued or renewed in violation of its provisions; or 2) any employee who inappropriately authorizes such an agreement.

The Department suggests that BEP consider monitoring and reporting those employers who are in default to the Secretary of State and request the Secretary to impose graduated sanctions in an effort to obtain compliance.

V. Technical Comments

Attached are technical comments from the Office of General Counsel.

DNR

West Virginia
Division of
Natural Resources

Capitol Complex
Building 3, Room 663
Charleston, WV 25305

Telephone: (304) 558-3315
FAX: (304) 558-2768

ATTENTION:
Call (304) 558-2754 as soon as
possible if transmission is incomplete.

NOTES:

DATE: Nov. 1, 1999

TO: Mary McLaughlin

ORGANIZATION: BEP

FAX NUMBER: 558-6101

FROM: Harry Price

SECTION:

NUMBER OF PAGES: (INCLUDING THIS COVER SHEET) 02

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LEGAL DIVISION

A F F I D A V I T

West Virginia Code §5A-3-10a states:

No contract or renewal of any contract may be awarded under this article to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor as defined in this section and the debt owed is an amount greater than five thousand dollars in the aggregate.

Definitions:

"Debt" means any assessment, penalty, fine, tax or other amount of money owed to the state because of a judgement, fine, permit violation, license assessment, penalty or other assessment presently due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon;

"Debtor" means any individual, corporation, partnership, association, limited ability company or any other form or business association owing a debt to the state or any of its political subdivisions;

"Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor, so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

Exception:

The prohibition does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the West Virginia Code, worker's compensation premium, permit fee or environmental fee or assessment, and the matter has not become final, or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

Under penalty of law for false swearing (West Virginia Code §61-5-3), it is hereby certified that the bidder and all related parties do not owe any debts or, if a debt is owed, that the provisions of the exception clause (above) apply.

Vendor's Name: _____

Authorized Signature: _____ Date: _____

Cecil H. Underwood
Governor
William F. Vieweg
Commissioner



West Virginia Bureau of Employment Programs

Telephone 304/558-2630 • Fax 304/558-2992
• Job Service/Job Training Programs • Labor Market Information
• Unemployment Compensation • Workers' Compensation
Bureau home page <http://www.state.wv.us/bep>

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Please deliver this and the following 1 page(s) to:

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Company: _____ Fax #: 558-6101

From: William F. Vieweg

Date: November 2, 1999

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URGENT FYI FOR COMMENT CONFIDENTIAL

Comments:

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State College and University Systems of West Virginia

Central Office

Clifford M. Trump, Chancellor
State College System of West Virginia

Charles W. Manning, Chancellor
University System of West Virginia

November 1, 1999

The Honorable William F. Vieweg
Commissioner
Bureau of Employment Programs
Building 4, Room 610
112 California Avenue
Charleston, WV 25305

RE: Public Comments Regarding Title 96, Exempt Legislative Rule, Bureau of Employment Programs,
Series 1

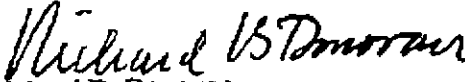
Dear Commissioner Vieweg:

Please consider these comments during the public comment period for Title 96, Exempt Legislative Rule,
Bureau of Employment Programs, Series 1:

1. There should be a minimum dollar amount for purchases for which this rule applies. For example, it would be impractical for agencies to check the quarterly listing for defaulted businesses for small dollar purchases. A more practical approach would be to have the rule apply to purchases above a certain dollar amount such as those above \$15,000, which is higher education's minimum limit for competitive sealed bidding.
2. Agencies should only be expected to check a vendor's status at the time of contract award and not continuously during the contract period. If a vendor defaults within the contract period, they should be allowed to continue the contract to completion, but not be issued new contract until the default is corrected.

Thank you for your consideration of these comments.

Sincerely,


Richard B. Donovan
Assistant Director of Facilities

RBD

F:\b\ford\donovan\LETTERS\11-01-99

cc: Mr. Perry Pauley
Dr. John F. Thralls
Mr. Thomas Sonneleitner

1018 KANAWHA BOULEVARD, EAST SUITE 700 CHARLESTON, WV 25301-2827
TELEPHONE: (304) 558-2101 FAX: (304) 558-0259

State College and University Systems of West Virginia

Central Office

Clifford M. Trump, Chancellor
State College System of West Virginia

Charles W. Manning, Chancellor
University System of West Virginia

November 1, 1999

The Honorable William F. Vieweg
Commissioner
Bureau of Employment Programs
Building 4, Room 610
112 California Avenue
Charleston, WV 25305

RE: Public Comments Regarding Title 96, Exempt Legislative Rule, Bureau of Employment Programs, Series I

Dear Commissioner Vieweg:

Please consider these comments during the public comment period for Title 96, Exempt Legislative Rule, Bureau of Employment Programs, Series I:

1. There should be a minimum dollar amount for purchases for which this rule applies. For example, it would be impractical for agencies to check the quarterly listing for defaulted businesses for small dollar purchases. A more practical approach would be to have the rule apply to purchases above a certain dollar amount such as those above \$15,000, which is higher education's minimum limit for competitive sealed bidding.
2. Agencies should only be expected to check a vendor's status at the time of contract award and not continuously during the contract period. If a vendor defaults within the contract period, they should be allow to continue the contract to completion, but not be issued new contract until the default is corrected.

Thank you for your consideration of these comments.

Sincerely,

Richard B. Donovan
Richard B. Donovan
Assistant Director of Facilities

RBD
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cc: Mr. Perry Pauley
Dr. John F. Thralls
Mr. Thomas Sonneleitner

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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**

General comments to the proposed rule were submitted as follow:

I.

How will the Bureau implement this rule with purchase order cards?

II.

How will this rule handle multi-year or indefinite contracts when employers are in default?

III.

What special requirements, if any, will it take for people to implement this rule?

IV.

Due to the implementation of the proposed rule through an Internet file interrogation process (as described in Bureau of Employment Program Communications) will cause significant administrative hardships and compliance problems within the licensing and registration units of the Tax Department. The Tax Department requests that the proposed rule be amended to permit the Bureau of Employment Programs and the Tax Department to adopt mutually agreeable means and procedures for the automated review and matching of databases of the Bureau of Employment Programs and the Tax Department.

The Tax Department requested that the rule be amended as follows:

Change the Title of Section 96-1-9 to read as follows:

96-1-9, Procedure for petitioning for exemption, exceptions, procedures.

Add a subsection 9.5 to read as follows:

9.5. Notwithstanding other provisions of this rule, the Commissioner and the Tax Commissioner shall adopt mutually agreed procedures for automated review and matching of Tax Department databases with databases of the of the Bureau of Employment Programs for implementation of sections 21A-2-6(18) and 21A-2-6c of the West Virginia Code.

V.

The proposed rule requires agencies to monitor Bureau of Employment Programs compliance of these entities issued a “contract, license, permit, certificate, or other authority to conduct a trade, profession or business.”

VI.

The Code states “The rules shall provide a procedure allowing any agency or interested person, after being covered under the rules for at least on year, to petition the Council to be exempt from the provisions of the rules.” Unfortunately this provision is not included in the proposed rule.

VII.

The Department of Transportation believes this Rule is appropriate and should be implemented as written.

VIII.

That Rule 96 be amended to include an exemption for health providers, providers of custodial services (i.e. foster care homes, group homes) and providers of services which are necessary for the protection of public health.

IX.

At a bare minimum, the Department requests that the Bureau of Employment Programs implement this rule according to West Virginia Code §21A-2-6(18) in phases, with health providers, providers of custodial services (i.e. foster care homes, group homes) and providers of services which are necessary for the protection of public health.

X.

Rule 96 mandates untenable administrative and financial burdens upon the agencies such as follows:

(1) Added responsibility on agencies to be a watch dog for Bureau of Employment Programs requiring valuable staff time; (2) the reporting process diverts offices within DHHR from their vital mission of licensing and monitoring health service providers and care providers for quality and licensure compliance; (3) the Rule can eradicate contractual relationships of other government agencies solely in the basis of Bureau of Employment Program's interest. (In the case of DHHR, this will impact the health and welfare of the citizens of the State), and (4) it requires agencies to notify affected vendors of Bureau of Employment Program's hearing process and requires the respective agencies to participate in hearings if the notice is challenged.

XI.

Rule 96 is vague in its requirements of agencies in that the degree of diligence required by state employees to ensure that the agency is in compliance with the rule is not described. Is a default status of a prospective provider/vendor available at all times? How and what mechanism will agencies use to access and determine default?

XII.

Are there other remedies available for use by the agency short of ending the contractual relationship in an effort to enforce compliance?

XIII.

Rule 96 does not specify a dollar threshold for compliance, nor does it detail how agencies ensure compliance when using a state purchasing card.

XIV.

The proposed rule does not state the consequences upon: (1) any contract license, permit or certificate which is granted, issued or renewed in violation of its provisions; or (2) any employee who inappropriately authorizes such an agreement.

XV.

The Department suggests that Bureau of Employment Programs consider monitoring and reporting these employers who are in default to the Secretary of State to impose graduated sanctions in an effort to obtain compliance.

XVI.

Technical comments from the DHHR's Office of General Counsel were taken into consideration.

XVII.

There should be a minimum dollar amount for purchases for which this rule applies. For example, it would be impractical for agencies to check the quarterly listing for defaulted businesses for small dollar purchases. A more practical approach would be to have the rule apply to purchases above a certain dollar amount such as those above \$15,000, which is higher education's minimum limit for competitive sealed bidding.

XVIII.

Agencies should only be expected to check a vendor's status at the time of contract award and not continuously during the contract period. If a vendor defaults within the contract period, they should be allowed to continue the contract to completion, but not be issued new contract until the default is corrected.

The Commissioner of the Bureau of Employment Programs responds to the above comments as follows:

I.

Section 21A-2-6(18) applies to all contracts of employing units with state agencies. It is expected that before the agency uses the purchase order card, it determine if the employer is on the default list.

II.

All state contracts are renewed annually and upon renewal the list of defaulting employers will be reviewed to determine if the agency can do business with the said employer.

III.

There are no special requirements for the agency to implement this rule. For example, at the time of contract, or contract renewal, the agency will check the employer default list and depending on whether or not the employer's name is on it, either issue or not issue a contract.

IV.

The Bureau on this issue will enter into a Memorandum of Understanding with the Tax Department.

V.

The proposed rule does not require agencies to monitor Bureau of Employment Programs compliance of employers doing business with the state. (See answer III)

VI.

The provision an employer can use to petition the Performance Council to be exempt from the provisions of the rules is §96-1-7.

VII.

The Bureau agrees. The rule is appropriate and should be implemented.

VIII.

There is no authority under the statute for such an exemption. The statute applies to all employing units. As a result, §96-1-9.4 has been deleted from the rule.

IX.

The rule according to §21A-2-6(18), has to be promulgated no later than the first day of January, Two Thousand, and therefore, cannot now be implemented in phases due to its passage being so late.

X.

Please refer to answer III.

Agencies do not have to notify affected vendors of Bureau of Employment Program's hearing process, nor do the respective agencies have to participate in hearings if notice is challenged. The hearing procedure has been deleted from this

rule due to the fact that after notice of default the statutes allow the employer a certain amount of time to protest the default and define a hearing and appeal process that the employer can go through.

XI.

The Bureau states that an agency checks the default status only at the time the contract, permit or license, etc. is issued or renewed. Remember, all state contracts come up for renewal once a year.

The Bureau of Employment Program's defaulting employer's list is the mechanism all agencies will use for access to determine default.

XII.

Once the employer is on the Bureau of Employment Program's defaulting employer's list, with the exception for a request for review by the Director of the Legal Services Division, no other remedy is available if the employer will not pay off his default.

XIII.

The statute permits no dollar amount minimum for which the rule applies.

XIV.

The Bureau of Employment Program's Legal Services Division will enforce Rule 96 through a writ of mandamus which is issued from a court and directed to a private or municipal corporation, etc. commanding that they abide by the rule imposed by law.

XV.

The statute does not permit the Bureau of Employment Programs to report defaulting employers to the Secretary of State's Office to impose graduated sanctions in an effort to obtain compliance.

XVI.

DHHR's technical comments were taken into consideration in the rule's revision.

XVII.

The statute does not allow minimum dollar amounts for purchases to be applied to the rule.

XVIII.

The Bureau agrees that the agencies should only be expected to check a vendor's status only at the time of contract award and renewal.

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*

November 22, 1999

David Tincher, CPPO Director
State of West Virginia
Department of Administration
Purchasing Division
2019 Washington Street, East
Charleston, West Virginia 25305

Re: Bureau of Employment Programs
Proposed Rule 96CSR1

Dear Mr. Tincher:

Thank you for your comments to Rule 96CSR1. In response to your comment that the Purchasing Division has previously implemented the requirements of HB 2730 (now WV Code §5A-3-10a), please let me inform you that unlike §5A-3-10a of the West Virginia Code, §21A-2-6(18) on which this rule is based, gives the Bureau no authority to exempt any contract based on the amount of the contract.

Again, thank you for your comments.

Very truly yours,

William F. Vieweg
Commissioner

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*

November 22, 1999

Harry F. Price, Executive Secretary
Division of Natural Resources
State Capitol Complex
Building 3, Room 669
1900 Kanawha Boulevard, East
Charleston, WV 25305-0660

Re: Bureau of Employment Programs
Proposed Rule 96CSR1

Dear Mr. Price:

Thank you for taking the time to comment on the above-proposed rule. The proposed rule requires only that agencies first review a list compiled by the Bureau of Employment Programs of employers that are in default at the time of contract, permit or license issuance or renewal. The agency need only notify the defaulting employer of the reason for the denial of license, permit, etc.

Concerning the issue that Rule 96 does not provide a procedure to petition for exemption, however, §96-1-9 of the rule does allow for any agency or interested person, after being covered under the rule for at least one year, to petition the Performance Council for such an exemption.

Again, I would like to thank you for both your oral and written comments to Rule 96CSR1.

Very truly yours,

William F. Vieweg
Commissioner

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

November 22, 1999

Mr. Richard B. Donovan
Assistant Director of Facilities
State College and University Systems
of West Virginia
1018 Kanawha Blvd., East, Suite 700
Charleston, WV 25301-2827

Re: Bureau of Employment Programs
Proposed Rule 96CSR1

Dear Mr. Donovan:

Thank you for your comments to the above-proposed rule. First, in response to your comment that there should be a minimum dollar amount for purchases to which this rule applies, §21A-2-6(18) of the West Virginia Code gives the Bureau no authority to exempt any contract based on the amount of the contract.

Secondly, in response to your comment that agencies should only be expected to check a vendor's status at the time of a contract award, the rule provides that at the time of renewal or issuance of a contract the list of the Bureau's defaulting employers is to be reviewed to determine if the employer is in default. If found in default, notice is to be sent by your agency to the employer in order that he has an opportunity to cure the default. Since all state contracts are subject to annual renewal, the rule does not require a compliance review during the period of the contract.

Again, I would like to thank you for your comments to Rule 96CSR1.

Very truly yours,

William F. Vieweg
Commissioner

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*

November 22, 1999

The Honorable Joseph M. Palmer
Tax Commissioner
State Tax Department
State Capitol Complex
Building 1, Room W-300
1900 Kanawha Boulevard, East
Charleston, WV 25303-0842

Re: Bureau of Employment Programs
Proposed Rule 96CSR1

Dear Commissioner Palmer:

Thank you for your comments to the above-proposed rule. The Bureau would be pleased to adopt mutually agreed procedures for the automated review and matching of Tax Department databases with the databases of the Bureau of Employment Programs for implementation of §21A-2-6(18) and §21A-2-6c of the West Virginia Code. Please have your designee contact Mary McLaughlin at 558-3403 to prepare an appropriate memorandum of understanding.

Again, thank you for your comments to Rule 96CSR1.

Very truly yours,

A handwritten signature in black ink, appearing to read "William F. Vieweg".

William F. Vieweg
Commissioner

1

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*

November 22, 1999

Susan Settle, General Counsel
Department of Health and Human Resources
Building 3, Room 265, Capitol Complex
Charleston, West Virginia 25303

Re: Bureau of Employment Programs
Proposed Rule 96CSR1

Dear Ms. Settle:

Thank you for taking the time to comment on the above-proposed rule. I regret we are unable to exempt providers of health care services (i.e., foster care homes, group homes) and providers of services which are necessary for the protection of public health, since such exemptions are not authorized by West Virginia Code §21A-2-6(18). This law applies to all employing units whose accounts are in default with the Commissioner of the Bureau of Employment Programs.

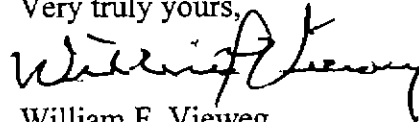
Concerning your request that the Bureau implement this rule in phases, §21A-2-6(18) of the West Virginia Code states that the rules subjecting all applicable agencies and contracts, licenses, permits, certificates or other authority to conduct trades, professions, or businesses to its requirements must be promulgated no later than January 1, 2000.

Finally, in response to your comment that the rule mandates untenable, administrative and financial burdens upon the agencies, the only two added responsibilities that Rule 96 creates upon your agency is to first review a list compiled by the Bureau of employers in default to the Bureau at either the time of the issuance or renewal of their contracts, licenses, permits or certificates and secondly, to notify the defaulted employers of the reason for denying the license, permit, etc.

Ms. Susan Settle
November 22, 1999
Page two

Again, I would like to thank you for your comments reflecting the concerns of your agency to proposed Rule 96CSR1.

Very truly yours,



William F. Vieweg
Commissioner

P.S. The technical comments from the Office of the General Counsel will be taken under consideration.

MEMORANDUM

TO: File

FROM: Mary Blaine McLaughlin *MBM*
Counsel to Bureau of Employment Programs/
Unemployment Compensation Division

DATE: December 14, 1999

RE: Amendment to 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

After the comment period on the above proposed rule, an amendment from the Tax Department's comment was added by the Performance Council. It is as follows:

§96-1-8. Procedures for implementation.

8.1 Notwithstanding other provisions of this rule, the Commissioner and the Tax Commissioner shall adopt mutually agreed procedures for automated review and matching of Tax Department databases with databases of the Bureau of Employment Programs for implementation of § 21A-2-6(18) of the West Virginia Code.