

WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #1

FILED

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OFFICE OF WEST VIRGINIA SECRETARY OF STATE

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 The Division Of Environmental Protection 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: September 16, 1996 TIME: 10:00 a.m.

LOCATION OF PUBLIC HEARING: Charleston Civic Center

Room 206

Charleston, West Virginia

COMMENTS LIMITED TO: ORAL, WRITTEN, BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Randall S. Elkins, Counsel

The last day for receipt of written comments is September 20, 1996.

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

Legal Services Division

P.O. Box 3922

Charleston, WV 25339-3922

Andrew N. Richardson Commissioner

4.20

**Bureau of Employment Programs**  
112 California Avenue  
Charleston, West Virginia 25305-0112

**Gaston Caperton**  
Governor  
**Andrew N. Richardson**  
Commissioner



August 12, 1996

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

Re: Title 96, Series 1 -- "Rule Implementing The Requirement That Prohibits The Division Of Environmental Protection 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"

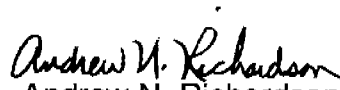
Dear Secretary Hechler:

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,

  
Andrew N. Richardson  
Commissioner

## **TITLE 96, SERIES 1**

### **BRIEF SUMMARY OF THE RULE**

This rule implements the provisions of West Virginia Code § 21A-2-6 (18) by identifying the Division of Environmental Protection as an agency that is required to withhold the approval, initial or on 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 to determine if the subject employer is in default. It also provides a procedure allowing employers to contest the fact of default if 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 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. ..." 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.

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Title 96

Type of Rule:  Legislative Exempt     Interpretive     Procedural

Agency Bureau of Employment Programs

Address 112 California Avenue

Charleston, WV 25305

**1. Effect of Proposed Rule**

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$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 this rule:**

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

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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.

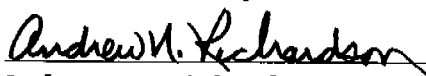
Collecting amounts from those employers that are in default should help reduce the potential burden of increased tax rates on those employers that do make required payments.

C. Economic Impact on Citizens/Public at Large.

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

Date: 8/9/96

Signature of Agency Head or Authorized Representative



Andrew N. Richardson

Commissioner, Bureau of Employment Programs

FILED

AUG 12 10 54 AM '96

TITLE 96

EXEMPT LEGISLATIVE RULE

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

BUREAU OF EMPLOYMENT PROGRAMS

SERIES 1

**RULE IMPLEMENTING THE  
REQUIREMENT THAT PROHIBITS THE DIVISION OF ENVIRONMENTAL  
PROTECTION 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-6-2 (18) which prohibits agencies of this state from granting, issuing, or renewing any contract, license, permit, certificate, or other authority to conduct a trade, profession, or business to or with any employing unit whose account is in default with the Commissioner of the Bureau of Employment Programs with regard to the administration of chapters twenty-one-a or twenty-three of the Code of West Virginia.

1.2. Authority. -- West Virginia Code §21A-2-6(18), (1), (2), & (14); §21A-2-19; §21A-3-7(b) & (c), §23-1-1, §23-2-9; and §23-2-17. Pursuant to West Virginia Code §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 Acts of the Legislature, Regular Session, 1994, Chapter 63, the Department of Commerce, Labor and Environmental Resources was abolished. Pursuant to that same act and to executive order no. 5-94 by the Governor, the Commissioner of the Bureau of Employment Programs is empowered to promulgate rules without the consent or approval of a departmental secretary.

1.3. Filing date. -

1.4. Effective date. -

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

## **§96-1-2. Definitions.**

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

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

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

2.3 "Approval document" means any contract, license, permit, certificate, or other authority to conduct a trade, profession, or business.

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

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

2.6 "Council" means the Compensation Programs Performance Council, created in article three, chapter twenty-one-a of the Code.

2.7 "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.

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.

2.8 "Division of Environmental Protection" means the Division of Environmental Protection, the Director of the Division of Environmental

Protection, a Chief of any Office of the Division of Environmental Protection, or any other person who has the authority to grant , issue or renew any approval document under the provisions of chapter twenty-two of the Code.

2.9 "Division" means the Workers' Compensation Division or the Unemployment Compensation Division, or both, within the Bureau of Employment Programs.

2.10 "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.

2.11 "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 country; 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.

2.12 "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 allow any approval document issued, granted or renewed subsequent to the date of the repayment agreement to be summarily rescinded if the employer defaults in the repayment agreement. As used in this rule repayment agreements do not include repayment agreements entered into prior to the effective date of this rule unless the agreement is modified to include the provisions required in this definition.

2.13 "Review" means either to query a computerized database to determine if the applicant is identified as in default or to determine whether the applicant's name is included on the list of employers in default supplied by the Commissioner.

### **§96-1-3. General Prohibition.**

Pursuant to the provisions of West Virginia Code §21A-2-6 (18), the Division of Environmental Protection 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 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, the Division of Environmental Protection 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 the Division of Environmental Protection shall notify the applicant in writing, by certified mail, return receipt requested, that the Division of Environmental Protection 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  
Attention: Director, Legal Services Division  
Post Office Box 3922  
Charleston, West Virginia 25339-3922

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

**§96-1-5. Conditional Issue.**

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

**§96-1-6. Hearing.**

6.1 The notice required by subsection 4.2 shall advise the applicant that it may request a hearing to contest the fact of default or other relevant issue. It may request, in writing, a hearing from the Commissioner of Bureau of Employment Programs within thirty (30) days of its receipt of the 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 the Division of Environmental Protection;
- (2) A statement of the facts that entitle the applicant to administrative relief;
- (3) A statement whether the applicant wishes an evidentiary hearing or waives the opportunity for such a hearing;
- (4) A request for specific relief; and
- (5) Any other relevant information.

**§96-1-8. Burden of proof.**

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

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

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

9.2 If the Division of Environmental Protection 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 chapter twenty-three or twenty-one-a of the Code, or both.

9.3 If a person other than the Division of Environmental Protection 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 chapter 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.

**§96-1-10. Severability.**

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