

Rule Title:

Rule 96

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

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 hearing held. However, based on past experience we do not feel many hearings will be requested. Additionally, we anticipate that any costs incurred as a result of the rule will be offset by additional amounts collected from employers in default.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

This rule is already in place and this is only for clarification of the previous rule.

Date: July 26, 2006

Signature of Agency Head or Authorized Representative

Paul E. Radloff

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 26, 2006

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Bureau of Employment Programs

112 California Avenue, Charleston, WV 25305

(304) 558-3403

LEGISLATIVE RULE TITLE: Rule Implementing the Requirement That Prohibits Agencies From Granting, Issuing, or Renewing Approval Documents With Employing Units in Default With the Bureau of Employment Programs.

1. Authorizing statute(s) citation West Virginia Code §21A-2-6(17)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 23, 2006

b. What other notice, including advertising, did you give of the hearing?
Bureau of Employment Programs only had a comment period

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 24, 2006 the comment period ended.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

- f. Name, title, address and **phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Mary Blaine McLaughlin, Counsel to the Bureau of Employment Programs

112 California Avenue, Charleston, West Virginia 25305

Telephone: (304) 558-3403; E-mail address mmclaugh@workforcewv.org

- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

Does not apply

b. Date of hearing or comment period:

June 23, 2006 to July 24, 2006

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

There were no comments during the comment period and no changes to this Rule.

d. Attach findings and determinations and reasons:

Attached _____

TITLE 96

FILED

LEGISLATIVE RULE

2006 JUL 26 A 10:53

BUREAU OF EMPLOYMENT PROGRAMS

OFFICE WEST VIRGINIA
SECRETARY OF STATE

SERIES 1

**RULE THAT PROHIBITS AGENCIES
FROM GRANTING, ISSUING, OR RENEWING
APPROVAL DOCUMENTS WITH
EMPLOYING UNITS IN DEFAULT WITH
THE BUREAU OF EMPLOYMENT PROGRAMS**

§96-1-1. General.

1.1. Scope. -- This legislative rule is intended to set forth the procedures enabling the implementation of the provisions of W. Va. Code §21A-2-6(17) that ~~prohibits~~ requires agencies (defined as any unit of state government such as officers, agencies, divisions, departments, boards, commissions, authorities or public corporations), to revoke and prohibit agencies 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 chapter twenty-one-a of the West Virginia Code.

1.2. Authority. -- W. Va. Code §21A-2-6(17).

1.3 Filing date. --

1.4. Effective date. --

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

§96-1-2. Definitions.

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

2.1. "Agency" means 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 a completed form or other document, including a proposed contract, 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. "Bureau" means the West Virginia Bureau of Employment Programs as defined by §21A-1-4 of the West Virginia Code.

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

2.7. "Commissioner" means the Commissioner of the Bureau of Employment Programs, pursuant to W. Va. Code §§21A-2-1, ~~12~~ and ~~13~~ 21A-2-6.

2.8. "Default", means 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 Bureau or has entered into appropriate repayment agreements, but does not remain in compliance with its obligations under the repayment agreements and is put on the Default List.

For purposes of this rule, an employer who has failed to submit required payments, interest or penalties, and required quarterly reports by the required due dates is presumed to be in default. (See §21A-5-16, §21A-5-17 of the West Virginia Code.)

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

2.910. "Division" means the ~~d~~Division of ~~u~~Unemployment ~~e~~Compensation within the Bureau of Employment Programs.

2.4011. "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, 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.

2.4112. "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.

2.13. "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; 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 chapter twenty-one-a of the Code, but does not include repayment agreements entered into prior to the effective date of this rule, unless the agreement is modified to include the provisions required in this definition.

2.15. "Review" means either to query a computerized database or list to determine if the applicant's name is on the default list with the Commissioner with regard to the administration of the Unemployment Insurance Program.

§96-1-3. General Prohibition.

Pursuant to the provisions of W. Va. Code §21A-2-6(17), 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 required quarterly reports, payments, interest and penalties and is required quarterly reports on the Bureau's Default List.

§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 Bureau's Default List. 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 on the Bureau's Default List~~, an agency shall notify the applicant in writing, as in their normal course of business, that the agency has been informed that the applicant is ~~in default with the Commissioner of the Bureau of Employment Programs on the Bureau's Default List~~ and that the approval document can not be issued until the applicant is no longer ~~in default on said list~~. A copy of the notice shall be sent to the ~~Commissioner~~ Bureau addressed as follows:

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

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

4.4. If the applicant disagrees with the Bureau's decision of placing his name on the ~~d~~Default ~~H~~List, he may request a hearing under 96CSR2, Rule for Administrative Hearing.

§96-1-5. Revocation.

5.1. Pursuant to the provisions of W. Va. Code §21A-2-6(17)(A), an agency shall revoke any approval document of any employing unit whose account is ~~in default~~ on the Default List with the Commissioner at the time the license, permit, contract, certificate or other authority is renewed.

5.2. If the Bureau has reason to believe that an employing unit that is in default is conducting its business pursuant to an approval document with an agency, the Bureau shall notify the agency of its duty to revoke the approval documents.

5.3. If the agency determines that the employing unit, that is the subject of the notification in subsection 5.2., is conducting its business pursuant to an approval document issued by the agency, the agency shall notify the employing unit in writing, as in their normal course of business, that the agency has been notified that the employing unit is ~~in default with the Bureau under the provisions of the Unemployment Compensation Act~~ on the Default List and that the approval document must be revoked until the employing unit is no longer on said list. ~~The agency will have 90 days from the date of notification from the Bureau to revoke the employing unit's license, until the employing unit is no longer in default.~~ A copy of the notice shall be sent to the Bureau addressed as follows:

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

5.4. The authorizing document shall not be issued as long as the employer continues to be ~~in default~~ on the Default List.

§96-1-6. Conditional Issue.

An approval document shall be conditionally issued or conditionally restored if revoked, if the applicant has entered into a repayment agreement with the Bureau for payment in full of all payments, interest and penalties owed and quarterly reports filed. If the applicant does not maintain continued compliance with the repayment agreement, the

Bureau shall notify the agency that the applicant is in noncompliance. Upon receiving the notice, the agency shall rescind or revoke the approval document, as appropriate.

§96-1-7. Request for Review Reconsideration; Letter for Hearing.

7.1 When an employing unit's approval document is revoked or not issued or renewed due to its ~~unemployment compensation account being in default with the Bureau and its name appearing on the dDefault HList~~, the employing unit ~~who is in default~~ may request a review reconsideration of the decision from the Bureau at the address as follows:

~~Bureau of Employment Programs
Legal Section (5302FED)
112 California Avenue
Charleston, West Virginia 25305~~

Bureau of Employment Programs
Attn: Commissioner of the Bureau of
Employment Programs
112 California Avenue
Charleston, West Virginia 25305

7.2. Where an employer objects and requests a reconsideration of the decision to put his name on the Default List, then the employer shall be entitled to file a letter requesting a reconsideration within 30 days of the mailing date of the notice that he is on the Default List, such time limitations being declared to be a condition to the right to litigation and thus jurisdictional.

7.3. The Bureau may stay enforcement. If the employing unit files a request for reconsideration, the Commissioner may stay the enforcement of the non-renewal or revocation of the approval document pending reconsideration, as long as the following conditions are met:

a. The Commissioner may only issue the stay of the enforcement of the non-renewal or revocation of the approval document if there are significant factual or legal issues regarding the placement of the employing unit on the Default List. If the Bureau has properly issued a delinquency notice to which the employing unit has failed to timely request reconsideration or file a letter for hearing, then the enforcement of the non-renewal or revocation of the approval document shall not be stayed.

b. An employer may petition the Commissioner for a hearing within 14 days of the mailing date of the employer's reconsideration decision.

7.4. Administrative Hearings. All administrative hearings conducted as a result of the Bureau's reconsideration decisions made under the provisions of this rule shall be held in accordance with 96 CSR 2, Rule for Administrative Hearings.

7.5. Appeal to Circuit Court. The Commissioner may stay enforcement of the non-renewal or revocation of the approval document pending appeal of the Bureau's final order to circuit court.

§96-1-8. Procedure for petitioning for exemption.

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

8.2. If the agency petitions to be exempt, it must clearly demonstrate to the Commissioner 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-one-a of the Code.

8.3. 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 chapter twenty-one-a of the Code, and that the person has an exemplary record of payment of amounts due under the provisions of chapter twenty-one-a of the Code, as applicable.

§96-1-9. Procedures for Implementation.

Notwithstanding other provisions of this rule, the Commissioner of the West Virginia Bureau of Employment Programs and the Tax Commissioner shall adopt mutually agreed procedures for automated review and matching of Tax Department databases with databases of the Bureau for implementation of this rule.

§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.