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TITLE 96

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LEGISLATIVE RULE

BUREAU OF EMPLOYMENT PROGRAMS

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

SERIES 1

**RULE THAT PROHIBITS REQUIRING STATE AGENCIES TO  
REVOKE OR NOT TO FROM GRANTING, ISSUING, OR RENEWING  
APPROVAL DOCUMENTS WITH EMPLOYING UNITS IN DEFAULT  
WITH ON THE BUREAU'S OF EMPLOYMENT PROGRAMS DEFAULT LIST**

**§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 requiring State agencies (defined as any unit of state government such as officers, agencies, divisions, departments, boards, commissions, authorities or public corporations), to revoke and not to 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 Unemployment Compensation Division.~~

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 West Virginia 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 West Virginia Bureau of Employment Programs. The list, ~~which will be created by the Bureau~~ may be provided to the agency in the form of a computerized database ~~or other databases~~ that the agency can access.

2.10. "Division" means the Division of Unemployment Compensation within the West Virginia Bureau of Employment Programs.

2.11. "Employing unit" or "Employer" 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.

2.12. "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~~ Bureau, 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 either a computerized database or a 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~~ Bureau with regard to required quarterly reports, payments, interest and penalties and is required quarterly reports on the Default List.

### **§96-1-4. Timing of Review.**

4.1. After an application for the approval document is complete and ~~no further changes may be made to it prior to its final approval and before it~~ the approval document is issued, ~~an~~ the agency shall review the Default List. This does not prevent the agency from reviewing the Default List a review prior to that time and notifying the applicant of the results earlier.

4.2. If the applicant's name appears as ~~being in default on the Default List, an~~ the agency shall notify the applicant in writing, as in ~~their~~ its 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 Default List and that the approval document can not be issued until the applicant is no longer in default on the List.~~ A copy of the agency's 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. The agency shall issue a decision on the application within fourteen calendar days. If the approval document is not agency fails to issued, granted or renewed or reject an approval document within fourteen calendar days of the review that caused notice to be given to the applicant under subsection 4.2 of this section, the agency shall conduct a new review shall be conducted.

4.4. If the applicant disagrees with the Bureau's decision of ~~to placing his its~~ name on the Default List, ~~he it~~ 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 its~~ normal course of business, that the ~~agency has been notified that the employing unit employer 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 employer is no longer on the 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. The agency shall send A 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 approval document shall~~ may 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 may 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 to file quarterly reports. 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 ~~reissue~~ revoke the approval document, as appropriate.

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

7.1. When an employing unit's agency revokes or refuses to issue, grant or renew an approval document pursuant to this rule, 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 default list, the employing unit who is in default may request a review of an employer who objects to the agency's decision from the Bureau at may submit a written request for reconsideration within 30 days after the agency notice was mailed to 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. 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 employing unit has made a timely request for reconsideration or for a hearing pursuant to this rule.

b. There are significant factual or legal issues regarding the placement of the employing unit on the Default List.

7.3 The Commissioner may refuse to reconsider the request for reconsideration if the request was not filed on time.

7.4 If the Commissioner upholds the agency's decision, the employer may petition the Commissioner for a hearing within fourteen days after the reconsideration decision was mailed.

7.5. All administrative hearings conducted pursuant to this rule shall be held in accordance with 96 CSR 2, Rule for Administrative Hearings.

7.6. The Commissioner may stay enforcement of an agency's decision to revoke or not to renew an approval document pending an employer's appeal of the Bureau's final order to the Circuit Court of Kanawha County (§56-1-1 of the West Virginia Code.

**§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~~ its provisions ~~of this rule~~.

8.2. If ~~the~~ an 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~~ an 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.