

**WEST VIRGINIA  
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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: West Virginia Bureau of Employment Programs TITLE NUMBER: 96

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Requiring State Agencies To Revoke or  
Not To Grant, Issue or Renew Approval Documents With Employing Units  
on the Bureau's Default List

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

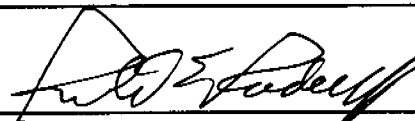
TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) House Bill 2670

SECTION 64-11-2, PASSED ON March 10, 2007

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE  
FOLLOWING DATE: April 26, 2007



Authorized Signature

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**TITLE 96**

**LEGISLATIVE RULE**

**BUREAU OF EMPLOYMENT PROGRAMS**

**SERIES 1**

**REQUIRING STATE AGENCIES TO  
REVOKE OR NOT TO GRANT, ISSUE, OR RENEW  
APPROVAL DOCUMENTS WITH EMPLOYING UNITS  
ON THE BUREAU'S 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) 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 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 Bureau of Employment Programs, Unemployment Compensation Division.

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

1.3 Filing date. --

1.4. Effective date. --

**§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 and 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 created by the Bureau may be provided to the agency in the form of a computerized database 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 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 to query either a computerized database or a list to determine if the applicant's name is on the Default List.

### **§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 Bureau with regard to required quarterly reports, payments, interest and penalties and is on the Default List.

### **§96-1-4. Timing of Review.**

4.1. After an application for the approval document is complete and before the approval document is issued, the agency shall review the Default List. This does not prevent the agency from reviewing the Default List earlier.

4.2. If the applicant's name appears on the Default List, the agency shall notify the applicant in writing, as in its normal course of business, that the applicant is on the Default List and that the approval document can not be issued until the applicant is no longer on the List. A copy of the agency's 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

4.3. The agency shall issue a decision on the application within fourteen calendar days. If the agency fails to issue, grant or renew or reject an approval document within fourteen calendar days, the agency shall conduct a new review.

4.4. If the applicant disagrees with the Bureau's decision to place its name on the Default List, it may request a hearing under 96CSR2, Rule for Administrative Hearing.

**§96-1-5. Revocation.**

5.1. Pursuant to W. Va. Code §21A-2-6(17)(A), an agency shall revoke any approval document of any employing unit on the Default List.

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 its normal course of business, that the employer is on the Default List and that the approval document must be revoked until the employer is no longer on the List. The agency shall send a copy of the notice 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 approval document may not be issued as long as the employer continues to be on the Default List.

**§96-1-6. Conditional Issue.**

An approval document 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 revoke the approval document, as appropriate.

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

7.1. When an agency revokes or refuses to issue, grant or renew an approval document pursuant to this rule, an employer who objects to the agency's decision 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  
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 its provisions.

8.2. If 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 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.