

**WEST VIRGINIA  
SECRETARY OF STATE  
JOE MANCHIN, III  
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

FILED

2004 MAR 19 A 9:34

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Bureau of Employment Programs TITLE NUMBER: 96

CITE AUTHORITY: §21A-2-6(17)

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

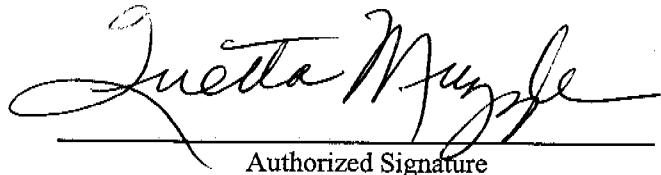
TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF 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

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

  
\_\_\_\_\_  
Authorized Signature

**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: March 8, 2004

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* Bureau of Employment Programs  
112 California Avenue  
Charleston, West Virginia 25305  
  
Telephone: (304) 558-3403

LEGISLATIVE RULE TITLE: \_\_\_\_\_  
Rule Implementing the Requirement that Prohibits Agencies  
from Granting, Issuing, or Renewing Contracts, Licenses, . . .

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

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
January 22, 2004

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:  
February 23, 2004 at 5 p.m. 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)

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- 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

Fax No.: (304) 558-2468

Telephone No.: 558-3403; e-mail address: mmclaugh@wvbep.org

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- 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)

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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.

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b. Date of hearing or comment period:

January 22, 2004 to February 23, 2004 at 5p.m.

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, SERIES 1**

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

This rule implements the provisions of West Virginia Code §21A-2-6(17) by specifically identifying the Division of Environmental Protection as one of the many agencies that is required to revoke or 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 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 AMENDMENT**

West Virginia Code §21A-2-6(17) requires the Commissioner to promulgate rules “under which agencies of this state shall revoke or refuse 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 commissioner with regard to the administration of this chapter....” On July 1, 2003, Senate Bill No. 2013 was passed and became effective from passage. The amendments to this proposed rule update the rule in accordance with the new version of §21A-2-6(17) of the West Virginia Code.

□  
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 96

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
<b>ESTIMATED TOTAL COST</b>	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
<b>PERSONAL SERVICES</b>	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
<b>CURRENT EXPENSE</b>	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
<b>REPAIRS &amp; ALTERATIONS</b>	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
<b>EQUIPMENT</b>	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
<b>OTHER</b>	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00

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 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.
3. Objectives of These Rules: This rule is an attempt to meet the legislative requirements contained in W. Va. Code §21A-2-6(17). 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 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: \_\_\_\_\_

Signature of Agency Head or Authorized Representative:

\_\_\_\_\_

TITLE 96

FILED

LEGISLATIVE RULE

BUREAU OF EMPLOYMENT PROGRAMS

2004 MAR 19 A 9:34

SERIES 1

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**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 rule is intended to set forth the procedures enabling the implementation of the provisions of West Virginia Code §21A-2-6(17) that 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 chapter twenty-one-a of the West Virginia Code.

1.2. Authority. -- West Virginia Code §§21A-2-6(17); 21A-2-19; 21A-3-7(b). Public notice requirements of West Virginia Code §29A-3-1 et seq, 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 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" 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 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 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 West Virginia Code §§21A-2-1, -12 and -13.

2.8. "Default", for purposes of the administration of chapter twenty-one-a of the Code means that 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 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 division of unemployment compensation 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 is 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 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.

2.13. "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 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 included is in default with the Commissioner with regard to the administration of Chapter twenty-one-a of the Code.

### **§96-1-3. General Prohibition.**

Pursuant to the provisions of West Virginia 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 the administration of chapter twenty-one-a 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, an agency shall review the 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, 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 with regard to the administration of chapter twenty-one-a of the Code 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:

Name to Whom  
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 default list, he may request a hearing under 96CSR2.

**§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 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 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 chapter twenty-one-a of the Code and that the approval document must be revoked. *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

**§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. 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, an agency shall rescind the approval document.

**§96-1-7. Request for Review.**

7.1 When an employing unit's contract, license, permit, certificate or other authority 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 the decision from the Bureau at the address as follows:

Bureau of Employment Programs  
Attention: Deputy Commissioner of Administration  
112 California Avenue  
Charleston, West Virginia 25305

**§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. 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.