

**WEST VIRGINIA
SECRETARY OF STATE
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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: 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: _____

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) HB 2718

SECTION 64-10-2, PASSED ON April 8, 2005

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: May 25, 2005


Authorized Signature

#3.20

TITLE 96

LEGISLATIVE RULE

BUREAU OF EMPLOYMENT PROGRAMS

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 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).

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 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", 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.

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. "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, 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.

2.11. "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; 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 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 payments, interest, penalties and required quarterly reports.

§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 of the Bureau of Employment Programs 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
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 the Unemployment Compensation Act 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

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

§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, the agency shall rescind the approval document.

§96-1-7. Request for Review.

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 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
FAM/Legal Section (5302FED)
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.