

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

Form #2

Do Not Mark In This Box

FILED

2003 SEP 30 P 1:33

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Bureau of Employment Programs TITLE NUMBER: 96

RULE TYPE: Exempt Legislative Rule CITE AUTHORITY: §21A-2-6(17), §23-1-1b(16)

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Rule Implementing the Requirement that Prohibits Agencies from
Granting, issuing or Renewing Contracts, Licenses, Permits,
Certificates or Other Authority to Conduct a Trade Profession of

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH


ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS

COMMENT PERIOD WILL END ON ~~October 1, 2003~~ AT October 30, 2003 12:00 Noon ONLY WRITTEN

COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Mary Blaine McLaughlin
112 California Ave.
Charleston, West Virginia 25305

THE ISSUES TO BE HEARD SHALL BE
LIMITED TO THIS PROPOSED RULE.


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

\$5.40

TITLE 96, SERIES 1

BRIEF SUMMARY OF THE RULE

This rule implements the provisions of West Virginia Code § 21A-2-6(18) by specifically identifying the Division of Environmental Protection as one of the many agencies that is required 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 workers' compensation premium taxes and 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

West Virginia Code § 21A-2-6(18) requires the Commissioner with the approval of the Compensation Performance Council... to promulgate rules "under which agencies of this state shall not 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 and with regard to the administration of chapter twenty-three of this code...." Moreover, it allows the Commissioner to promulgate the rules in phases so that different agencies become subject to the rules at different times. However, rules subjecting all agencies to its requirements are to be promulgated no later than the first day of January, two thousand.

Under the new Workers' Compensation Unemployment Compensation law, Senate Bill 2013, passed in July, 2003, the above Rule will stay in effect until revised and new rules are promulgated and are in effect. (See §21A-2-6(17)(B) and §23-1-1b(16)(A), Section 96-1-6 of this Rule, Request for Review has been changed in the area of addresses where said request is to be sent. This is due to the Workers' Compensation Division splitting off from the Bureau of Employment Programs, on October 1, 2003 and a reorganization of the new Workers' Compensation Commission as well as the Bureau of Employment Programs.

TITLE 96

FILED

EXEMPT LEGISLATIVE RULE

2003 SEP 30 P 1:33

BUREAU OF EMPLOYMENT PROGRAMS

OFFICE WEST VIRGINIA
SECRETARY OF STATE

SERIES 1

**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 exempt rule is intended to set forth the procedures enabling the implementation of the provisions of West Virginia Code § 21A-2-6(18) 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 chapters twenty-one-a or twenty-three of the West Virginia Code.

1.2. Authority. -- West Virginia Code §§ 21A-2-6(18), (1), (2) & (14); 21A-2-19; 21A-3-7(b) & (c), 23-1-1, 23-2-9; and 23-2-17. Pursuant to West Virginia Code §21A3-7(c), rules adopted by the Compensation Programs Performance Council and the Commissioner are not subject to legislative approval as would otherwise be required under West Virginia Code § 29A-3-1 et seq. Public notice requirements of that chapter and article, however, 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. -- December 15, 1999.

1.4. Effective date. -- January 14, 2000.

1.5. Repeal and replacement. -- This rule does not repeal or replace any rule.

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

2.6. "Commissioner" means the Commissioner of the Bureau of Employment Programs, pursuant to West Virginia Code §§ 21A-2-1, -12 and -13.

2.7. "Council" means the Compensation Programs Performance Council, created in article three, chapter twenty-one-a of the Code.

2.8. "Default", for purposes of the administration of chapter twenty-three of the Code, means being in default as provided in West Virginia Code § 23-2-5(d), except as otherwise provided in this subsection. For purposes of the administration of chapter twenty-one-a of the Code 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 appropriate divisions of 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 Workers' Compensation Division or the Unemployment Compensation Division, or both, 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 to either the Division of Unemployment Compensation or the Division of Workers’ Compensation. The list, which will be created by the appropriate division of 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 chapters twenty-one-a or twenty-three of the Code, or both, 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 included as in default by the appropriate divisions of the Bureau of Employment Programs.

§96-1-3. General Prohibition.

Pursuant to the provisions of West Virginia Code §21A-2-6(18), 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 chapters twenty-one-a or twenty-three 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 chapters twenty-one-a or chapter twenty-three of the Code or both 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

Name to Whom
~~Bureau of Employment Programs~~
~~Workers' Compensation Division~~ Commission
Attention: Director, Receivables Management Unit
Post Office Box 153
Charleston, West Virginia 25321

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.

§96-1-5. Conditional Issue.

An approval document shall be conditionally issued if the applicant has entered into repayment agreement with the Commissioner for payment in full of all payments, interest and penalties owed. If the applicant does not maintain continued compliance with the repayment agreement, the Commissioner shall notify the agency, that the applicant is in noncompliance. Upon receiving the notice, an agency shall rescind the approval document.

§96-1-6. Request for Review.

6.1 When an employing unit's contract license, permit, certificate or other authority is not issued or renewed due to either its unemployment or workers compensation account being in default with the Commissioner and its name appearing on

the list, the employing unit who is in default may request a review of the decision from the Director of the Legal Services Division at the address as follows:

Bureau of Employment Programs
Attention: ~~Director, Legal Services Division~~ Deputy Commissioner of Administration
~~Post Office Box 3922~~ 112 California Avenue
Charleston, West Virginia ~~25339-3922~~ 25305

Workers' Compensation Commission
Attention: General Counsel
4700 MacCorkle Avenue, S. E.
Charleston, West Virginia 25304

§96-1-7. Procedure for petitioning for exemption.

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

7.2. If the agency petitions to be exempt, it must clearly demonstrate to the Council 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 chapters twenty-three or twenty-one-a of the Code, or both.

7.3. 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 chapters twenty-three or twenty-one-a of the Code, or both, and that the person has an exemplary record of payment of amounts due under the provisions of chapters twenty-three or twenty-one-a of the Code, as applicable.

§96-1-8. 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.