

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

Form #3

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

AGENCY: Higher Education Policy Commission TITLE NUMBER: 133

CITE AUTHORITY: §18B-1-6 and §18B-10-1(d)

AMENDMENT TO AN EXISTING RULE: YES  NO

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

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

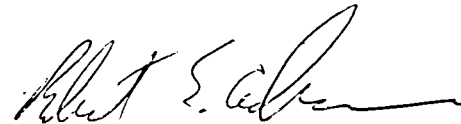
\_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: Series 32

TITLE OF RULE BEING PROPOSED: Tuition and Fee Policy

\_\_\_\_\_

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

**TITLE 133**  
**LEGISLATIVE RULE**  
**WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION**

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**SERIES 32**  
**TUITION AND FEE POLICY**

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**§133-32-1. General.**

- 1.1. Scope. This rule establishes the policy for the assessment of tuition and fees at West Virginia undergraduate public institutions of higher education.
- 1.2. Authority. West Virginia Code §18B-1-6 and §18B-10-1(d)
- 1.3. Filing Date. --
- 1.4. Effective Date. --

**§133-32-2. Definitions.**

- 2.1. Auxiliary Fees. Charges levied to all students to support auxiliary enterprises or optional charges levied only on students using the auxiliary service. Auxiliary fees include charges other than sales from entities that exist predominantly to furnish goods or services to students, faculty or staff such as residence halls, faculty and staff housing, food services, intercollegiate athletics, student unions, bookstores, parking and other service centers. Sales include revenue from merchandise and tickets, short term rental of space or equipment and sales of services to the general public.
- 2.2. Capital Fees. Charges levied on students to support debt service, capital projects and facilities maintenance and renewal. Capital Fees are divided into two categories, Education and General Capital Fees and Auxiliary Capital Fees. Education and General Capital Fees support instruction, research, academic support, student services, institutional support, operation and maintenance of plant, and scholarships and fellowship programs. Auxiliary Capital Fees support entities that exist predominantly to furnish goods or services to students, faculty or staff such as residence halls, faculty and staff housing, food services, intercollegiate athletics, student unions, bookstores, parking and other service centers.
- 2.3. Tuition and Required Educational and General Fees. Charges levied on all students of that class or category to support educational and general program services or optional charges levied for education and general services collected only from students using the service or from students

for whom the services are made available. Educational and general expenditures include instruction, research, academic support, student services, institutional support, operation and maintenance of plant and scholarships and fellowships. Education and general expenditures do not include expenditures for auxiliary enterprises or independent operations. An institution may create a category within Tuition and Required Education and General Fees named Tuition to classify a fee or group of fees charged for instructional services.

- 2.4. Full Cost of Instruction. Full cost of instruction includes the direct functional expenditures from each institution's audit for both instruction and student services expenditures.
- 2.5. Higher Education Price Index (HEPI). Inflation index designed specifically to track the main cost drivers in higher education and to measure the change in the price of the goods and services purchased by colleges and universities as measured by the Commonfund Institute.
- 2.6. Median Family Income. Median household income is household income which the U.S. Census Bureau gathers and reports annually from data gathered by various surveys. Median is the statistical center of all reported households income and is presumed to be a better gauge of income as opposed to average family income.
- 2.7. Peer. A higher education institution located in another state that is similar to a West Virginia college or university.
- 2.8. Special Fee. Operational charges or user fees charged to offset the specific costs for providing these services. These fees include, but are not limited to, course, lab, parking, late payments, drug testing, instrument fees, and other services provided to students. Charging students these fees allows financial aid to be used as a form of payment for qualifying students. These fees do not include sales of merchandise and tickets, short-term rental of space or equipment and sales or services to the general public.

**§133-32-3. Goals.**

- 3.1. The Commission seeks to achieve the following goals and objectives with its tuition rule:
  - 3.1.a. To establish equity in the ~~establishment~~ determination of tuition and fees charged to students.
  - 3.1.b. To foster goals related to program completion for West Virginia students.

- 3.1.c. To promote the future economic welfare of the state through an increased output of degree holders in West Virginia.
- 3.1.d. To establish tuition and fee rates that will provide for the most efficient blend of governmental, private, and student revenues based upon institutional mission, location, and student demographics.

**§133-32-4. Tuition and Fee Adjustments.**

- 4.1. Objectives. The Commission, in partnership with the institutional governing boards, shall enhance education opportunities for the widest range of state citizens:
  - 4.1.a. By establishing tuition and fee levels for in-state students that do not inhibit access to public education nor cause students to incur excessive debt; W. Va. Code §18B-1D-3(a)(2)(B); and
  - 4.1.b. By establishing tuition and fee rates for out-of-state students at levels which, at a minimum, cover the full cost of instruction unless doing so is inconsistent with a clearly delineated public policy goal established by the Legislature or the Commission. W. Va. Code §18B-1D-3(a)(2)(B).
- 4.2. Approval of Tuition and Required Fee Adjustments.
  - 4.2.a. Approval Guidelines. A governing board may approve auxiliary, tuition and required education and general, and capital fee increases for resident students each fiscal year of up to five percent collectively. Auxiliary, tuition and required education and general and capital fee increases above five percent collectively must be approved by the Commission. Governing boards are not required to approve sales prices. Programmed fee increases constituted as part of pre-existing institutional bond obligations/covenants shall be excluded from annual fee increase calculations.

A fee used solely for the purpose of complying with the athletic provisions of 20 U.S.C. 1681, *et seq.*, known as Title IX of the Education Amendment of 1972, is exempt from the limitations on fee increases set forth in this subsection for three years from the effective date. ~~[See Section §18B-10-1.(k).2.]~~ June 10, 2011.

- 4.2.a.1. For the purposes of this rule, calculation of five percent shall be based on all required tuition and fee rates charged to all West Virginia resident students.

- 4.2.a.2. Tuition increases related to fee simplification proposals that result in an expense neutral change for an in-state student shall not be counted toward the five percent allowance exempt from Commission approval.
- 4.2.b. In establishing guidelines, the Commission shall communicate annually by February 28 to institutions benchmarks and guidelines for consideration of any increase above five percent. The benchmarks and guidelines may include, but are not limited to, such items as:
  - 4.2.b.1. The HEPI, or other appropriate inflationary benchmark, which new appropriations to the institution's base budget for the corresponding fiscal year did not offset;
  - 4.2.b.2. Continued achievement of benchmarks in the institutional compact;
  - 4.2.b.3. Institution pursuit of the statewide compact for postsecondary education;
  - 4.2.b.4. The per capita income of West Virginia families and their ability to pay for college, statewide and specifically as to the county(ies) in which 75 percent of the institution's in-state students reside;
  - 4.2.b.5. Institutional distance of the sum of appropriations and tuition and fee revenues from peer equity levels as defined by the peer equity model;
  - 4.2.b.6. Institutional and state funding per full-time equivalent student;
  - 4.2.b.7. Most recent three-year history of tuition rates and increases;
  - 4.2.b.8. Total sources of student generated revenue, including special fee and program fee rates; and,
  - 4.2.b.9. Other factors as requested or deemed relevant by the Commission or in response to any new statutory language.
- 4.2.c. In responding to the guidelines and benchmarks provided by the Commission, each governing board shall provide the Commission

with an annual report that details:

- 4.2.c.1. All tuition and fee rates presently charged and the estimated number of students currently being charged the tuition and fees;
  - 4.2.c.2. The proposed total increase in any tuition and fees for the next fiscal year;
  - 4.2.c.3. The estimated number of students who will be charged the increased tuition and fees; and,
  - 4.2.c.4. The estimated increase in revenue to be generated from the increased tuition and fees.
- 4.2.d. A governing board shall propose tuition and required fee rates for non-resident students at levels that, at a minimum, cover the average full cost of instruction. Governing boards may submit for approval institutional policies that support a clearly delineated public policy goal established by the Legislature or the Commission, including but not limited to, proposals to increase the total number of graduates from the institution, aid in economic development or to maximize available capacity on campus.
- 4.2.d.1. Average full cost of instruction is based on the most recent financial statements. The average shall be determined by calculating the cost of instruction and student services per ~~FTE~~ full-time equivalent student. This calculation shall be provided to the institutions annually.
  - 4.2.d.2. Institutional governing boards may choose to set non-resident tuition based on the average institutional full cost of instruction or the average full cost of instruction for the system as a whole.

**§133-32-5. Expenditure.**

- 5.1. All tuition and fees collected may only be expended for the statutory purpose under which they were collected.

**§133-32-6. Refunds.**

- ~~6.1. Except for students receiving Title IV financial assistance, students who officially withdraw during a semester in the academic year shall receive a refund of regular fees in accordance with the following schedules.~~

~~6.1.a. Academic Year (Semester). Refunds for semesters shall be calculated using the following schedule:~~

~~6.1.a.1. During the first and second weeks, 90% refund.~~

~~6.1.a.2. During the third and fourth weeks, 70% refund.~~

~~6.1.a.3. During the fifth and sixth weeks, 50% refund.~~

~~6.1.a.4. Beginning with the seventh week, no refund.~~

~~6.1.b. Summer Terms and Nontraditional Periods. Refunds for summer sessions and nontraditional periods shall be established based upon the refund rate for the academic year and calculated using the following schedule:~~

~~6.1.b.1. During the first 13% of the term, 90% refund.~~

~~6.1.b.2. From 14% to 25% of the term, 70% refund.~~

~~6.1.b.3. From 26% to 38% of the term, 50% refund.~~

~~6.1.b.4. After 38% of term is completed, no refund.~~

~~6.1.c. Should the percentage calculation identify a partial day, the entire day should be included in the higher refund period.~~

~~6.1.2. Refunds of tuition and fees shall be effectuated in the same manner as the refunds dictated by federal financial aid rules or regulations.~~

6.1. Each governing board must establish a refund policy for students who officially withdraw during a semester that at minimum establishes refunds that complies with the following schedule:

6.1.a. A student who begins a term and withdraws after completing up to one (1) week or ten percent (10%) of the term is entitled to a refund of ninety percent (90%) of the charges;

6.1.b. A student who withdraws after completing more than ten percent (10%) through twenty-five percent (25%) of the term is entitled to a refund of seventy-five percent (75%) of the charges;

6.1.c. A student who withdraws after completing more than twenty-five percent (25%) through fifty percent (50%) of the term is entitled to a refund of fifty percent (50%) of the charges;

6.1.d. A student who withdraws after completing more than fifty percent (50%) of the term is not entitled to a refund; or

6.2. Each governing board may establish a refund policy for students who officially withdraw during a semester that establishes refunds based upon the same calculations that the United States Department of Education prescribes for the return of Title IV student financial aid funds.

**§133-32-7. Deferred Payment Plans.**

7.1. Each governing board may establish a policy that provides deferred payment plan for students allowing them to pay their tuition and fees in installments. The deferred payment plan(s) must provide for full payment prior to the end of the academic term. This policy must address:

7.1.a. The interest rates, if any, that will be charged during the plan.

7.1.b. The types of installment plans available either institutionally or through a third party provider.

**West Virginia Higher Education Policy Commission  
Meeting of December 9, 2011**

**ITEM:** Approval of Final Series 32, Tuition and Fee Policy

**INSTITUTIONS:** All

**RECOMMENDED RESOLUTION:** *Resolved*, That the West Virginia Higher Education Policy Commission approves Series 32, Tuition and Fee Policy, for final filing with the Secretary of State and submission to the Legislative Oversight Commission on Education Accountability for approval and further legislative action.

**STAFF MEMBER:** Ed Magee

**BACKGROUND:**

Series 32, Tuition and Fee Policy, the legislative rule that establishes the assessment of tuition and fees at West Virginia undergraduate public higher education institutions, was approved at the August 5, 2011 Commission meeting for filing with the Secretary of State for a thirty-day public comment period. The rule was modified extensively in response to the comments that were received during the original public comment period. The Commission subsequently approved the proposed rule for a second thirty-day public comment period on September 13, 2011.

As a result of the second thirty-day public comment period, additional revisions have been made to strengthen the rule and clarify the procedures to assess tuition and fees. In addition to the significant revisions as outlined below, staff also made minor formatting and technical changes.

**Substantive revisions based on suggestions from the second public comment period:**

1. To provide additional clarity "(HEPI)" was inserted after Higher Education Price Index. (Section 2.5.)
2. The word "determination" was exchanged for the word "establishment" to eliminate the redundant use of "establish". (Section 3.1.a.)
3. To improve clarity, the actual date of "June 10, 2011" was inserted. (Section 4.2.a.)

4. The phrase “annually by February 28” was inserted to provide an information dissemination date. (Section 4.2.b.)
5. Section 6 was revised to allow institutions more flexibility to address the particular needs of their students.
6. Section 7 was added to address deferred payment plans.

It is recommended that the Commission approve the amended proposed legislative rule for final filing with the Secretary of State and submission to the Legislative Oversight Commission on Education Accountability for approval and further legislative action.

## Ashley Schumaker

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**From:** Brenda Thompson [bthompso@wvu.edu]  
**Sent:** Monday, October 03, 2011 10:49 PM  
**To:** Brian Noland  
**Cc:** Russell Dean  
**Subject:** Series 32, Tuition and Fee Policy

Chancellor Noland,

I am writing in response to the proposed legislative rule, Series 32, Tuition and Fee Policy. 133-32-6 addresses refunds but it does not seem to take into consideration the current federal regulations for Return of Title IV Funds which requires schools to determine the earned and unearned portions of Title IV aid and does not dictate a schools refund policy. Taking this into consideration, it would seem to me that 6.1 should have the first part of the first sentence removed which would now read -

6.1 Students who officially withdraw during a semester in the academic year shall receive a refund of regular fees in accordance with the following schedules.

Also, 6.4.2 could be removed.

Thanks for allowing me to comment.

Brenda Thompson

Brenda Thompson  
Associate Vice President for Enrollment Management  
West Virginia University  
(304)293-3837  
[brenda.thompson@mail.wvu.edu](mailto:brenda.thompson@mail.wvu.edu)

## Ashley Schumaker

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**From:** Lisa Lively [Lisa.Lively@mail.wvu.edu]  
**Sent:** Thursday, October 13, 2011 1:55 PM  
**To:** Brian Noland  
**Cc:** Ashley Schumaker; Dan Durbin  
**Subject:** Re: Proposed Series 32, Tuition and Fee Policy  
**Attachments:** HEPC T&F Policy Response.pdf

Chancellor Noland,

In response to your request for comment, WVU is providing the attached letter with our comments regarding the revised proposed legislative rule, Series 32, Tuition and Fee Policy.

Lisa

Lisa A. Lively  
Director, Financial Services  
West Virginia University  
One Waterfront Place  
P.O. Box 6001  
Morgantown, WV 26506-6001

Telephone 304-293-8638  
FAX 304-293-6856

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>>> On 9/13/2011 at 10:24 PM, in message

<[2E6598DEC7ABF44A8841F6D05F128005012A3FEB@dusk.HEPC.WVNET.EDU](mailto:2E6598DEC7ABF44A8841F6D05F128005012A3FEB@dusk.HEPC.WVNET.EDU)>, "Ashley Schumaker"

<[schumaker@HEPC.WVNET.EDU](mailto:schumaker@HEPC.WVNET.EDU)> wrote:

Please find attached the proposed legislative rule, Series 32, Tuition and Fee Policy, as revised based on the initial comment period. The Commission approved the proposed rule at today's special meeting for filing with the Secretary of State for an additional thirty-day public comment period, which ends at 5:00 PM on Thursday, October 13, 2011. Comments regarding the proposed rule should be submitted in writing to Chancellor Noland using the contact information outlined below. Any comments received will be formally addressed at the conclusion of the comment period.

Dr. Brian Noland  
Chancellor  
West Virginia Higher Education Policy Commission  
1018 Kanawha Boulevard, East, Suite 700  
Charleston, West Virginia 25301  
[noland@hepc.wvnet.edu](mailto:noland@hepc.wvnet.edu)

Please let me know if you have any questions regarding the attached rule or the rule making process.

Thanks,  
Ashley

**Ashley Schumaker**

Executive Assistant to the Chancellor

Director of Communications

West Virginia Higher Education Policy Commission

1018 Kanawha Boulevard East, Suite 700

Charleston, WV 25301

Phone: 304-558-0699

Fax: 304-558-1011

Cell: 304-550-4099

Website: [www.hepc.wvnet.edu](http://www.hepc.wvnet.edu)



West Virginia University

Office of the Senior Associate Vice President for Finance

TO: Dr. Brian Noland  
Chancellor

FROM: Daniel A. Durbin  
Senior Associate Vice President for Finance

DATE: October 13, 2011

TITLE: Title 133 Series 32 Tuition and Fee Policy

In response to your September 13, 2011 e-mail requesting comments on the revisions to proposed Title 133 Series 32 Tuition and Fee Policy, WVU recommends that  $\beta$ 133-32-6 Refunds be revised to provide each governing board the latitude and authority to develop their own, institutional specific, refund policy (and schedule) to better meet their institution's specific needs and objectives. The diversity of programs, institutions and students may require each institution to handle this process differently. For example, WVU's present policy may or may not meet the objectives of other institutions. Based on our observations, a few examples of policy/practices that conflict are:

1. WVU allows students to add and drop courses during the first week of the traditional academic term (16 week) without a financial penalty. Specifically, at WVU if a student drops a course during the first week of the term, his/her charges would be reduced 100% for the course dropped during this period. However, under the HEPC proposed policy a student's charges would be reduced by only 90% holding the student responsible for 10% of the charges for any course that is dropped during the first week of the academic term.
2. This practice also applies to students who are enrolled in non-traditional courses. Students enrolled in a 10, 9, 8 or 7 week course will have 100% of their charges reduced if the course is dropped within the first 3 days of the course. The charges will be reduced by 90% if the course is dropped on day 4. Under the HEPC proposed policy the 90% reduction will take place on day 1 instead of day 4.
3. Furthermore, WVU's reduction in fee schedule for the non-traditional courses is based on days while the proposed HEPC policy is based on a percent of term. We, at WVU, find that using the basis of "days" as opposed to "percent" is much easier for students to understand and allows them to fully understand their obligations and responsibilities. It's also less burdensome from an administrative standpoint.
4. WVU's current policy has worked well from an operational, compliance and customer need standpoint and we advocate the need to maintain this flexibility. It does appear that the wisdom of allowing institutional specific policies to be developed and implemented currently exists within the West Virginia Council on Community and Technical College Education's proposed Title 135 Legislative Rule Series 32 Tuition and Fees  $\beta$ 135-32-6 Refunds. With the addition of a few minor edits to that section, WVU recommends that HEPC incorporate the Council's language. WVU recommends that HEPC's proposed language reflect the following:

### **133-32-6 Refunds/Reduction in Charges**

**6.1 Each Board of Governors must establish a refund/reduction in charges policy that, at minimum, follows the United States Department of Education, return of Title IV funds for those students who receive Title IV assistance.**

**6.2 Each Board of Governors may choose to have a separate refund/reduction in charge policy for all other students who did not receive Title IV financial assistance.**

Thank you for the opportunity to provide comments regarding the revised proposed policy. I welcome the opportunity to answer any questions you might have regarding our recommendations.

## Ashley Schumaker

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**From:** Heuton, Mary Ellen [heuton@marshall.edu]  
**Sent:** Thursday, October 13, 2011 2:13 PM  
**To:** Brian Noland  
**Cc:** Stephen Kopp; Ashley Schumaker; Beckett, Barry A; Turner, Matthew; McGuffey, Michael J; Kathy Bialk; Cottrill, Layton  
**Subject:** Proposed Series 32, Tuition and Fee Policy - Comments from Marshall University  
**Attachments:** HEPC Title 135 Series 32 Comments.docx

Chancellor Noland,

It was very nice seeing you yesterday and we very much appreciate your time and that of the Commission and staff. We are very excited about the future of Marshall University and the positive impact these projects will make.

Please find attached our response to the Proposed Series 32, Tuition and Fee Policy. I know that an adjustment was made to the Refund section from the prior version based on our comments, but we felt that the wording had some contradictory language. We have since discovered that the language used in the CTC policy might address this contradiction while also providing a policy that will work for all institutions without requiring major changes to institutional policies or processes.

Thank you for your consideration.

Mary Ellen

Mary Ellen Heuton, CPA  
Interim Chief Financial Officer  
Marshall University  
One John Marshall Drive  
Huntington, WV 25755  
304-696-6603  
[heuton@marshall.edu](mailto:heuton@marshall.edu)

TO: Dr. Brian Noland, Chancellor

FROM: Mary Ellen Heuton  
Interim Chief Financial Officer

DATE: October 13, 2011

TITLE: Title 133 Series 32 Tuition and Fee Policy

In response to your September 13, 2011 e-mail asking for comments on the revisions to proposed Title 133 Series 32 Tuition and Fee Policy, Marshall University recommends that §133-32-6 Refunds be revised to give each governing board the latitude and authority to develop a refund policy and schedule that meets their institutional objectives.

Marshall's present policy may or may not meet the objectives of other institutions. Our refund policy is a percentage based model that spans six weeks of a regular academic term, and the first 38% of summer terms.

Additionally, Marshall University allows students to add and drop courses during the first week of the traditional academic term without any financial penalty (ie: schedule adjustment week).

It appears that the West Virginia Council on Community and Technical College Education's proposed Title 135 Legislative Rule Series 32 Tuition and Fees §135-32-6 Refunds provides the flexibility to allow Marshall to continue our current refund policy. Marshall University recommends that HEPC incorporate the Council's language:

**§133-32-6 Refunds**

**6.1 Each Board of Governors must establish a refund policy that, at minimum, follows the United States Department of Education, return of Title IV funds for those students who receive Title IV assistance.**

**6.2 Each Board of Governors may choose to have a separate refund policy for all other students who did not receive Title IV financial assistance.**

Thank you for the opportunity to provide comments regarding the revised proposed policy. I welcome the opportunity to discuss these comments with you.

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Tuition and Fee Policy

Type of Rule:  Legislative  Interpretive  Procedural

Agency: Higher Education Policy Commission

Address: 1018 Kanawha Blvd. East, Suite 700, Charleston, WV 25301  
Contact: Rob Anderson

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Phone Number: 304-558-4016 Email: randerson@hepc.wvnet.edu

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

No impact.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

| <b>FISCAL YEAR</b>                 |  |   |   |
|------------------------------------|--|---|---|
| <b>Effect of Proposal</b>          | <b>Current Increase/Decrease (use "-")</b> | <b>Next Increase/Decrease (use "-")</b> | <b>Fiscal Year (Upon Full Implementation)</b> |
| <b>1. Estimated Total Cost</b>     | 0.00                                       | 0.00                                    | 0.00  |
| Personal Services                  | 0.00                                       | 0.00                                    | 0.00  |
| Current Expenses                   | 0.00                                       | 0.00                                    | 0.00  |
| Repairs & Alterations              | 0.00                                       | 0.00                                    | 0.00  |
| Assets                             | 0.00                                       | 0.00                                    | 0.00  |
| Other                              | 0.00                                       | 0.00                                    | 0.00  |
| <b>2. Estimated Total Revenues</b> | 0.00                                       | 0.00                                    | 0.00  |

Rule Title: \_\_\_\_\_

3. **Explanation of above estimates (including long-range effect):**  
Please include any increase or decrease in fees in your estimated total revenues.

There will be no effect on cost or revenue.

**MEMORANDUM**

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

Date: December 12, 2011

Signature of Agency Head or Authorized Representative

