

**WEST VIRGINIA  
SECRETARY OF STATE  
BETTY IRELAND  
ADMINISTRATIVE LAW DIVISION**

Form #5

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2006 JAN 23 A 11:59

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE  
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: Council for Community and Technical College Education TITLE NUMBER: 135

CITE AUTHORITY: 18B-1-6(c)(3)

RULE TYPE: PROCEDURAL  INTERPRETIVE

EXEMPT LEGISLATIVE RULE

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 4

TITLE OF RULE BEING AMENDED: Rules, Guidelines and Other Policy Statements by  
Governing Boards

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

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

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE  
EFFECTIVE DATE OF THIS RULE IS February 23, 2006

  
Authorized Signature

4.60

**TITLE 135  
PROCEDURAL RULE  
WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE  
EDUCATION**

**FILED**

2006 JAN 23 A 11:59

**SERIES 4  
RULES AND ADMINISTRATIVE PROCEDURES**

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**§135-4-1. General.**

1.1. Scope. -- Rule establishing process for adoption, amendment, or repeal of rules and posting and publication of rules and administrative procedures by state institutions of higher education.

1.2. Authority. -- W. Va. Code §18B-1-6(c)(3).

1.3. Filing Date. -- January 23, 2006

1.4. Effective Date. -- February 23, 2006

1.5. Repeals and replaces previous Series 4 dated October 31, 2001.

**§135-4-2. Definitions.**

2.1. "Rule" means any regulation, guideline, directive, standard, statement of policy or interpretation of general application and future effect that also has institution-wide effect or affects the rights, privileges or interests of employees, students or citizens. The following are not rules:

2.2.1. Regulations, guidelines or policies established for individual units, divisions, departments or schools of the institution that deal solely with the internal management or responsibilities of a single unit, division, department or school; or

2.2.2. Academic curricular policies that do not constitute a mission change for the institution.

2.2. "Administrative Procedure" means any regulation, guideline, directive, standard or statement of policy or interpretation of future effect that does not qualify as a "rule."

**§135-4-3. Application.**

3.1. This rule shall apply to the adoption, amendment, or repeal of any rule by a governing board of any public higher education institution under the Council for Community and Technical College Education's jurisdiction, as well as to the posting and publication of rules and administrative procedures.

3.2. A governing board may not delegate responsibility for approving a rule to the President.

3.3. The Chancellor shall periodically provide institutions with examples of topics that should be dealt with only through the rule-making process. If the governing board or President of an institution is unsure whether the rulemaking process must be used, the governing board or

President shall seek guidance from the Chancellor or his/her designee.

3.4. Each institution's governing board shall adopt a rule that outlines the rulemaking process at that institution.

3.5. No rule shall be adopted, amended, or repealed by a governing board without the provisions in this rule and its own rule on rules being met.

#### **§135-4-4. Rulemaking Process.**

4.1. Consultation. Institution officers are encouraged to consult with interested groups before presenting a proposed rule to the governing board for consideration.

4.2. Approval of Proposed Notice and Rulemaking. If a President or governing board determines that a rule concerning a subject matter under the governing board's jurisdiction should be adopted, amended, or repealed, the President or governing board may approve a notice of proposed rulemaking. A notice of proposed rulemaking shall include:

4.2.1. A brief description of the subject matter of the rule, an explanation of how comments will be received, the deadline for receiving comments, and contact information for the person who has been designated to receive comments; and

4.2.2. A copy of the proposed rule if adoption or amendment is proposed or a copy of the current rule if repeal is proposed.

4.3. Notice of Proposed Rulemaking. Notices of proposed rulemaking shall be provided directly to the Chancellor, those persons representing students, faculty, and classified employees at the institution, and other interested parties. In addition, notices of proposed rulemaking shall be posted prominently at a location or locations identified in the institution's rule on rules, as well as on the institution's website, and copies shall be made available at no cost to any requester.

4.4. Comment Period. Except for emergency rules, a notice of proposed rulemaking must provide for a public comment period of at least thirty days during which written comments will be received before final adoption of the rule. A President or governing board may also provide for a public hearing.

#### **4.5 Approval of Final Rule.**

4.5.1. If a governing board originally approved a notice of proposed rulemaking at a previous meeting and no comments are received during the comment period, a proposed rule need not be re-approved by the governing board if the board provides so at the time it approves the proposed rule.

4.5.2. If written comments are received or a hearing held during the comment period, the governing board shall summarize the comments received and/or made and make a determination concerning each issue raised. The governing board may amend a proposed rule as a result of the comments or evidence received. All written comments and evidence received and determinations made by the governing board shall be made available in the manner set out in Sec. 4.3 of this rule at least ten (10) days prior to the meeting in which the governing board gives final approval to the rule and be carefully preserved by the institution and open for public inspection and copying for a period of at least five years from the date of final board action.

4.5.3. The institution shall furnish the Chancellor or his/her designee with a copy of the final rule within thirty (30) days of the governing board's formal adoption of the final rule.

4.5.4. Any rule adopted by a governing board shall not be effective until approved by the Chancellor or his/her designee. The Chancellor or his/her designee shall notify the governing board of any specific or general objections to the rule and allow the governing board to address the objections. If the governing board disagrees with the objections, it may protest the Chancellor's decision to the Council. If the Chancellor or his/her designee has not provided any objections to a rule within thirty (30) days of receipt of its final version it shall be deemed approved. Approval by the Chancellor or Council may not be withheld unless the rule is inconsistent with state or federal law or the policies and mission of the Council.

#### **§135-4-5. Posting and Publication of Approved Rules.**

5.1. Approved rules shall be posted prominently at a location or locations identified in the institution's rule on rules, as well as on the institution's website, and copies shall be made available at no cost to any requester.

5.2. Approved rules shall be enumerated in a manner that makes them easily identifiable.

5.3. No later than October 1 of each year, each institutional governing board shall file with the Council a list of all institutional rules that were in effect on the first day of July of that year, as well as a list of institutional rules repealed during the preceding year.

5.3.1. For each rule listed, the governing board shall identify the most recent date on which each rule was adopted, amended or repealed.

5.3.2. The list shall include a statement by the chair of the governing board certifying that the governing board complied with the provisions of W. Va. Code §18B-1-6 and this rule when each rule was adopted.

#### **§135-4-6. Emergency Rules.**

6.1. In the case of an emergency, a governing board may adopt, amend, or repeal a rule without first following the procedure set out in this rule.

6.2. For the purpose of this section, an emergency exists when the adoption, amendment, or repeal of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare, or is necessary to comply with a time limitation established by state or federal law or regulation or a directive or rule of the Council, or to prevent substantial harm to the public interest, or to deal with financial exigency. The facts constituting an emergency shall be communicated in writing in advance to the Chancellor, who shall disapprove the action of the governing board if the Chancellor, or his/her designees, disagrees that an emergency existed.

6.3. Any emergency rule shall remain in effect no longer than three (3) months and shall expire unless a final rule has been approved under the normal process set out in this rule.

#### **§135-4-7. Administrative Procedures.**

7.1. This rule contains no restrictions on the adoption, amendment or repeal of administrative procedures. A governing board, however, is free to impose restrictions on this process.

7.2. The institution shall post administrative procedures prominently at places where those subject to the administrative procedures are likely to see them.

**§135-4-8. Enforceability.**

8.1. Any institution rule that fits within the definition contained in section 2.1 of this rule, but which has not previously been adopted by a formal vote of the governing board, must be adopted, amended or repealed by the governing board on or before July 1, 2006, or it shall be void and may not be enforced.

8.2. Any institution rule adopted, amended or repealed after the effective date of this rule in a manner inconsistent with the provisions of this rule shall be void and may not be enforced.

8.3. Any institution rule or policy statement not posted in a manner consistent with the provisions of this rule may not be enforced.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: 135-4 Rules, Guidelines and Other Policy Statements by Governing Boards

Type of Rule:  Legislative  Interpretive  Procedural

Agency: WV Council for Community & Technical College Education

Address: 1018 Kanawha Boulevard East Suite 700  
Charleston, WV 25301

Contact: James L. Skidmore, Chancellor 558-0265

Phone Number: 304-558-0265 Email: 304-558-1646

**Fiscal Note Summary**

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

There are no direct costs or revenues associated with this rule.

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

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

Rule Title: 135-4 Rules, Guidelines and Other Policy Statements by Governing Boards

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

None

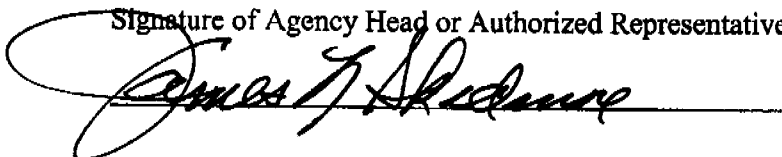
### MEMORANDUM

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.

None

Date: November 2, 2005

Signature of Agency Head or Authorized Representative





**WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION**

Nelson B. Robinson Jr., Chair • James L. Skidmore, Chancellor

## SUMMARY

### Title 135 Procedural Rule

WV Council for Community and Technical College Education

### Series 4 Rules and Administrative Procedures

This rule repeals and replaces 135 CFR, Series 4 effective on October 31, 2001. This rule is a rule about rules. It establishes a process for adoption, amendment or repeal of rules and posting and publication of rules and administrative procedures by state institutions of higher education.

**WV Council for Community and Technical College Education  
Meeting of January 18, 2006**

**ITEM:** Approval of Series 4, *Rules and Administrative Procedures*

**INSTITUTION(S):** All

**RECOMMENDED RESOLUTION:** *Resolved, That the WV Council for Community and Technical College Education approves revisions to Series 4, Rules and Administrative Procedures.*

**STAFF MEMBER:** Bruce Walker

**BACKGROUND:**

Senate Bill 603, enacted during the last regular legislative session, significantly changed the provisions of W.Va. Code §18B-1-6 relating to the rule-making authority of governing boards, the Higher Education Policy Commission, and the Council for Community and Technical College Education. Specifically, the statute more clearly defined what policies of governing boards require formal rules, required at least a thirty-day comment period before institutions adopted rules, and set forth an annual reporting requirement regarding institutional rules.

These statutory revisions have made it necessary for the Council and Commission to revise Series 4, which regulates the institutional rule-making process. While making the revisions, staff felt that Series 4 should be rewritten in its entirety to provide an easier step-by-step outline of the rule-making process.

At its October 27, 2005 meeting the Council approved submitting the revised Series 4 to the Secretary of State's Office for a comment period. Two comments were received. The first attached comments were received from Marshall University and West Virginia University. Staff believes there is no clear legislative intent to remove Marshall University and West Virginia University from the rule approval process currently in place which requires approval by the Chancellor. W. Va. Code §18B-1-6(a)(3) clearly indicates the Council is to promulgate a rule guiding the "development and approval of rules made by their respective governing boards, including the governing boards of Marshall University and West Virginia University". Furthermore, Sec. 4.5.4 of the proposed Series 4 states that approval of the Chancellor cannot be withheld unless a governing board's rule is inconsistent with state or federal law or the policies and mission of the Council. Thus, staff recommends this comment not be implemented.

The other Marshall and WVU comment recommended that a President be authorized to initiate the rule-making process without governing board initial approval. Staff has amended the draft to accommodate that suggestion.

The second attached comment came from the Community and Technical College of Shepherd. The comment made no specific change requests but questioned the general approach to the rulemaking process. In that the changes in Senate Bill 603 specifically require such detail in the rulemaking process, staff has not made any changes in the draft in regards to that comment.

It is recommended that Council approve the revised Series 4, *Rules and Administrative Procedures*.



Office of the Chief of Staff  
Vice President for Executive Affairs and General Counsel

November 22, 2005

**By Facsimile Transmission and Regular Mail**

Dr. Bruce Flack, Interim Chancellor  
West Virginia Higher Education Policy Commission  
1018 Kanawha Blvd. E., Suite 700  
Charleston, WV 25301-2800

Re: Proposed Amendments to Series 4 – Rules and Administrative Procedures

Dear Dr. Flack:

On behalf of West Virginia University and Marshall University, please accept these comments in response to the proposed changes to Title 133, Series 4, "Rules and Administrative Procedures" ("Series 4"). While we generally support the proposed revisions to Series 4, we believe that two provisions warrant reconsideration by the Commission.

First, Section 4.5.4, under which the Chancellor must approve all rules adopted by any governing board before those rules become effective, conflicts with the Legislature's intent, through passage of S.B. 603, to extend greater autonomy to the governing boards of Marshall University and West Virginia University. The Legislature precluded imposing such an approval requirement on Marshall's and WVU's boards through enactment of Section 18B-1-6(g) of the West Virginia Code, which states,

Within thirty days of the adoption of a rule, including repeal or amendment of an existing rule, the governing boards of Marshall University and West Virginia University, respectively, shall furnish to the Commission or Council, as appropriate, a copy of each rule which has been formally adopted.

By singling out these two institutions and specifying that their governing boards need only notify the Commission, the Legislature clearly indicated that rules adopted by the boards of WVU and Marshall are not subject to further approval or other action. Any other interpretation would render subsection (g) meaningless as repetitive – a result which would be contrary to fundamental rules of legislative analysis. Further, since S.B. 603 was designed in significant part to increase the autonomy of the governing boards of Marshall and WVU, subsection (g) cannot be interpreted as establishing additional oversight requirements on WVU and Marshall and thereby decrease that autonomy. Finally, the fact that the Legislature specifically subjected WVU and Marshall to the Commission's "rule on rules", see WV Code Section 18B-1-6(c)(3), does not change this

conclusion: while the Commission is authorized to set the rulemaking process for these two institutions, nowhere does subsection (c) authorize the granting of additional approval powers to the Chancellor or others. Thus, the proposed Section 4.5.4 should be modified to exclude the governing boards of WVU and Marshall from its provisions.

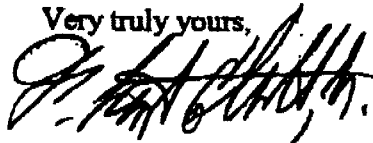
Second, both of us are concerned about a new procedural burden which will be imposed under Section 4.2. Under this provision, a proposed rule may be put out for public comment only after a governing board has voted to approve that notice of proposed rulemaking in an open meeting. Unless no public comments are received, see Section 4.5.1, final adoption by the board will only occur after a second board meeting and vote: since governing boards normally meet only six times each year, this will add, on average, two months to the rulemaking process. (This is a particular concern for WVU and Marshall, with only seven months remaining before they are required to have certain policies in place pursuant to section 18B-1-6(f) of the Code.) Currently, only a single board meeting is required for adoption of a new rule, since institutions may send out proposed rules for comment without a prior board vote.

This additional new step will not add any material value or safeguards to the rulemaking process. Under the more streamlined, single-meeting process which has been applied successfully for several years, the board is still required to pass the rule in open meeting, after receiving the benefit of comments submitted during the 30-day comment period. Thus, the current system already ensures public participation, transparency and careful consideration. Requiring a second board meeting will only add time and additional hoops to the process, which is contrary to the intent of the Legislature in passage of S.B. 603 to streamline lengthy procedures and thereby improve efficiency.

We believe that the solution to this problem is already laid out in the current Series 4, Section 3.1 of which allows either the governing board or the president to submit a proposed rule for public comment. Alternatively, Section 3.4 of the current Series 4 allows the governing board to delegate rulemaking authority to the president. At a minimum, we urge the Commission to allow governing boards to delegate to the president the ability to issue notices of proposed rulemaking without a prior board vote.

We greatly appreciate the opportunity to respond to the draft amendments to Series 4. Please do not hesitate to call me if you wish to discuss this further.

Very truly yours,



F. Layton Cottrill, Jr.  
General Counsel and Chief of Staff

cc: President Stephen J. Kopp  
Mr. Menis Ketchum, Chair MU BOG

## Janene Seacrist

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**From:** Peter Checkovich [pcheckov@shepherd.edu]  
**Sent:** Tuesday, November 08, 2005 1:13 PM  
**To:** Jim Skidmore  
**Subject:** Rule #4

Hi Jim,

I have read through and I am starting to digest the information on the Series 4 Rule on Rules. Jim, I have to say that if this rule started out as part of flexibility initiative, it has taken a very wrong turn somewhere along the line. Do we really want the Council to pass a rule that will create this degree of work for our Boards and hamper the operation of the CTC system colleges the way this rule could potentially do? For example, for a promotion and tenure policy, the exact process for applying and criteria for promotion would need to be spelled out as board policy and not in a faculty handbook, as currently exists.

Changing the promotion and tenure policy would then have to be carried out through the rule making process, which appears very cumbersome.

Have you heard any other comments, negative or positive, about Policy #4?

Pete.

Dr. Peter G. Checkovich, President  
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Martinsburg, WV 25401  
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