



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

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Office of West Virginia
Secretary Of State

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

AGENCY: Higher Education Policy Commission TITLE-SERIES: 133-64
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No
RULE NAME: 133-64 Administrative Exemption

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: 18B-1-6

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 11/20/2020

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 12/21/2020

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

E-mail notification to institutional officials, constituents and interested parties.

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

Establishes process to grant and remove administrative exemptions status to West Virginia baccalaureate institutions of higher education.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

Senate Bill 760 passed during the 2020 Regular Session of the Legislature requires the Policy Commission to promulgate rule.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

N/A

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

N/A

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

N/A

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2021 Increase/Decrease (use "-")	2022 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

N/A

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Cindy L Anderson -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 133
LEGISLATIVE RULE
WEST VIRGINIA HIGHER EDUCATION POLICY COMMISSION

ADMINISTRATIVE EXEMPTION

SERIES 64

§133-64-1. General.

1.1. Scope and Purpose. – This legislative rule establishes the process by which the West Virginia Higher Education Policy Commission (Commission) will grant administrative exemption status to and remove administrative exemption status from the State’s baccalaureate institutions of higher education.

1.2. Authority. – West Virginia Code §18B-1-1f(c).

1.3. Filing Date. --

1.4. Effective Date. --

1.5. This rule shall terminate and have no further force or effect upon the expiration of five years from its effective date.

§133-64-2. Definitions.

2.1. “Administratively exempted schools” means state colleges and universities that achieve and maintain three of the five of the following:

2.1.a. Graduation rate: A three-year average graduation rate of not less than 45 percent;

2.1.b. Retention rate: A three-year average retention rate of not less than 60 percent;

2.1.c. Credit head count enrollment: A three-year credit head count enrollment increase, or a decrease of not more than five percent over the same period;

2.1.d. Days of cash reserved: A three-year average of not less than 50 days cash reserved;

2.1.e. Composite Financial Index: A Composite Financial Index of not less than one as reported in the college and university’s audited financial statements; or

2.1.f. Whose governing board requests a review by the chancellor of any special circumstances and the Commission grants administratively exempted status based on those special circumstances as verified by the chancellor after his or her review.

2.2. “Composite Financial Index” means the benchmarking tool used by the Higher Learning Commission as a financial indicator and developed specifically for the higher education industry and is a combination of several different ratios, each of which is comprised of data that, when analyzed further, can provide insight into an institution’s financial health and inform decision-making processes;

2.3. “Credit headcount enrollment” means the total number of unique students, but not counting dual-enrolled high school students, who enrolled in credit-bearing classes during the fall, spring, and summer terms in a given academic year at a specific institution;

2.4. “Days of cash reserved” means the audited end of fiscal year cash balance, multiplied by 365, and then divided by the audited total expenses less depreciation, and less other post-employment benefit and pension liability expenses;

2.5. “Graduation rates” means the proportion of first time in college students who obtain a bachelor’s degree within six years, as further defined by and reported to the Commission;

2.6. “Retention rates” means the proportion of first-time, fall term, full-time freshmen students who are in continuing enrollment in the fall term of the next succeeding year;

2.7. “State college and university” shall have the same meaning as provided in West Virginia Code §18B-1-2.

§133-64-3. Procedure for Requesting Status as an Administratively Exempt School.

3.1. Requesting Administratively Exempt Status. – Any State college or university may apply to the Commission for designation as an administratively exempt school by its governing board submitting a letter to the Chancellor requesting such status and setting forth which of the criteria established in West Virginia Code §18B-1-1f(b) and reiterated in subsection 2.1 above the college or university meets.

3.2. Reviewing Administratively Exempt School Status. – Upon receipt of a request for administrative exemption, the Commission shall verify that the requesting institution meets the statutory criteria using data submitted by the college or university to, and validated by, the Commission.

3.3. Institutions shall provide promptly upon request from the Commission or Chancellor any information to support the Commission’s review of the institution’s performance as an administratively exempt college or university.

§133-64-4. Procedure for Granting or Denying Status as an Administratively Exempt School.

4.1. Approval of Administratively Exempt School Status. – Upon verification that an institution meets three of the five requirements to be designated as an administratively exempt school, the Commission shall vote at its next regularly scheduled meeting whether to grant or deny such request.

§133-64-5. Procedure for Reviewing Administratively Exempt Status Once Granted.

5.1. Review of Administrative Exempt School Status Institutions. – Commission staff will review annually all criteria, either statutory or special circumstances, for administratively exempt school status for the administratively exempt institutions.

5.2. If, during its annual review, Commission staff determines that an administratively exempt school has failed to meet one or more of the criteria by which it initially qualified for administrative exemption status, but that it also now meets one or more of the other criteria that would allow it to maintain its administrative exemption, Commission staff will notify the institution that it is being allowed to maintain its administrative exemption status under the newly met criteria.

5.3. Each year, as part of the statutorily mandated annual reauthorization process established in 133 C.S.R. 52, Annual Reauthorization of Degree Granting Institutions, the reauthorization review committee shall determine whether administratively exempted institutions are meeting at least three of the exemption criteria specified in Section 2 of this rule.

5.3.a. Those administratively exempted institutions meeting three or more of the criteria in the review process shall be reported in the annual reauthorization resolution to the Commission as qualified to maintain administratively exempt status.

5.3.b. Those administratively exempt institutions that fail to meet at least three of the exemption criteria shall be reported in the annual reauthorization resolution to the Commission as failing to meet the requirements to maintain the administratively exempt status. The institution shall be formally notified of this finding by the process set forth in Section 6 below.

§133-64-6. Revoking Administratively Exempt School Status Procedure.

6.1. Revoking Administratively Exempt School Status. – Upon the annual review, institutions that do not meet three of the five requirements for administratively exempt school status, or whose special circumstances have changed, the Chancellor will notify the President of the institution that they no longer meet the requirements for the designation and that the institution has one year to meet the requirements again.

6.1.a. Upon the second consecutive annual review where institutions that do not meet three of the five requirements for exempt status, the Chancellor will notify the President that the institution no longer is eligible and that the Commission will vote to revoke administratively exempt status in no less than 30 days.

6.1.b. After 30 days have passed following the notification that an institution no longer meets three of the five requirements for exempt status, the Commission may vote to revoke the institution's administratively exempt status.