

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

Form #2

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2005 OCT 27 P 2:29

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: WV Higher Education Policy Commission TITLE NUMBER: 133

RULE TYPE: Procedural CITE AUTHORITY: WV Code 18B-1-6(c)(3)

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 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: _____

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 November 28, 2005 AT 3:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Office of the Chancellor

Higher Education Policy Commission

1018 Kanawha Blvd., East

Charleston, WV 25301

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



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

#3.60

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 133-4: Rules and Administrative Procedures

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Higher Education Policy Commission

Address: 1018 Kanawha Boulevard East
Charleston, WV 25301

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	-0-	-0-	-0-	-0-	-0-
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:

The proposed rule has no direct impact in terms of obligating the State of West Virginia for funding.

3. Objectives of These Rules:

Establishes process for public higher education institutions in West Virginia to adopt, amend, or repeal rules and for posting and publication of rules and administrative procedures.

Rule Title: 133-4: Rules and Administrative Procedures

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

No direct impact.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

No direct impact.

C. Economic Impact on Citizens/Public at Large.

No direct impact.

Date: October 26, 2005

Signature of Agency Head or Authorized Representative:

Dennis C. Taylor

SUMMARY

**Title 133
Procedural Rule
West Virginia Higher Education Policy Commission**

**Series 4
Rules and Administrative Procedures**

This rule establishes a process for public higher education institutions to adopt, amend, or repeal rules by a governing board as well establishes a process for posting and publication of rules and administrative procedures. This rule totally replaces previous Series 4 dated October 31, 2001.

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TITLE 133
PROCEDURAL RULE
HIGHER EDUCATION POLICY COMMISSION

2005 OCT 27 P 2: 29

SERIES 4
RULES AND ADMINISTRATIVE PROCEDURES

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§133-4-1. 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. -- .

1.4. Effective Date. -- .

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

§133-4-2. 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."

§133-4-3. 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 Higher Education Policy Commission'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.

§133-4-4. 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 governing board determines that a rule concerning a subject matter under the governing board's jurisdiction should be adopted, amended, or repealed, the governing board may approve a notice of proposed rulemaking in a meeting that complies with the open governmental proceedings law. 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 governing board may also provide for a public hearing.

4.5 Approval of Final Rule.

4.5.1. If 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 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 Policy Commission. 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 Policy Commission may not be withheld unless the rule is inconsistent with state or federal law or the policies and mission of the Policy Commission.

4.5.5. In situations where the governing boards of Marshall University and West Virginia University have been given authority that inherently requires the governing board to promulgate and adopt a rule, that authority is void until the governing board adopts a rule in a manner consistent with this rule.

§133-4-5. 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 Policy Commission 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.

§133-4-6. 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 Policy Commission, 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.

§133-4-7. 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.

§133-4-8. 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.