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Mac Warner
Secretary of State
Bldg. 1, Suite 157K
1900 Kanawha Blvd. East
Charleston, WV 25305-0770

(304) 558-6000

sos.wv.gov

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NEW RULES FILED FOR PUBLIC COMMENT THIS WEEK			
AGENCY	**RULE/TYPE**	**AUTHORITY**	**HEARING/COMMENT PERIOD/LOCATION**
Emergency Management (170-04)	SIRN Emergency Purchasing Procedure Procedural	§5A-3-3a	Written Comments Only March 1, 2021, 4:00 pm GE McCabe 2403 Fairlawn Avenue Dunbar, WV 25064 ge.mccabe@wv.gov
Emergency Management (170-05)	Purchases During States of Emergency Procedural	§5A-3-3c	Written Comments Only March 1, 2021, 4:00 pm GE McCabe 2403 Fairlawn Avenue Dunbar, WV 25064 ge.mccabe@wv.gov

NO NEW EMERGENCY RULES FILED THIS WEEK				
AGENCY	**RULE/TYPE**	**AUTHORITY**	**EFFECTIVE DATE**	**DATE NOTICE OF HEARING**

Office of the Secretary of State
State Capitol
Charleston, West Virginia 25305

Mac Warner
Secretary of State
State of West Virginia

Telephone: (304) 558-6000
Toll Free: 1-866-SOS-VOTE
Fax: (304) 558-0900
www.wvsos.gov

GUIDE FOR USING THE RULE MONITOR IN THE STATE REGISTER

Column	1.	Agency Name, (Title and Series Number)
Column	2.	Rule Title, Price and Type
Column	3.	Date Notice of Public Hearing or Comment Period Filed
Column	4.	Date of Public Hearing or Last Date Comments Will Be Received
Column	5.	Date Emergency Rule Filed, Emergency Amendments Filed, Emergency Rule Decision (ERD) Number & Date ERD Filed (Effective Date of Emergency Rule)
Column	6.	Date Agency Approved Legislative Rules Filed.
Column	7.	Date Review by the Legislative Rule-Making Review Committee & Action Taken **Please Note** The Board of Education, Board of Trustees & Board of Directors File Their Rules With the Educational Over-Sight Committee
Column	8.	Legislative Action
Column	9.	Date Agency Final Files Legislative, Procedural or Interpretive Rules. This is the Final Step for Procedural & Interpretive Rules
Column	10.	Date Rule is Effective

- Emergency rules will not have a "Notice" date until the agency files one, but the rule will appear in Columns 1, 2 & 5. An Agency must file for either a public hearing or public comment period either before filing as an emergency or no more than 30 days after filing the rule as an emergency
- If more than one date appears in a column, it means the agency has repeated that step (ex. - holding an additional public hearing)

CROSS REFERENCE OF RULE MONITOR TITLE NUMBERS AND AGENCIES

TITLE NUMBER		NAME OF AGENCY
TITLE	1	ACCOUNTANCY
TITLE	2	ARCHITECTS
TITLE	3	BARBERS AND COSMETOLOGISTS
TITLE	4	CHIROPRACTIC EXAMINERS
TITLE	5	DENTISTRY
TITLE	6	FUNERAL SERVICE EXAMINERS
TITLE	7	PROFESSIONAL ENGINEERS
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TITLE	11	MEDICINE
TITLE	14	OPTOMETRY
TITLE	15	PHARMACY
TITLE	16	PHYSICAL THERAPY
TITLE	17	PSYCHOLOGISTS
TITLE	19	REGISTERED PROFESSIONAL NURSES
TITLE	20	SANITARIANS
TITLE	22	FORESTRY
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TITLE	25	SOCIAL WORK EXAMINERS
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TITLE	32	ACUPUNCTURE
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TITLE	76	SENIOR SERVICES
TITLE	78	HUMAN SERVICES
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TITLE	87	FIRE COMMISSION
TITLE	89	PUBLIC DEFENDER SERVICES
TITLE	90	CORRECTIONS
TITLE	91	MOTOR VEHICLES
TITLE	94	REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY
TITLE	110	TAX DEPARTMENT
TITLE	112	TREASURER
TITLE	114	INSURANCE COMMISSION
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TITLE	127	SECONDARY SCHOOLS ACTIVITIES COMMISSION
TITLE	133	HIGHER EDUCATION POLICY COMMISSION
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TITLE	143	PERSONNEL
TITLE	144	TOURISM
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RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Administration (148-01)	Purchasing Legislative	7/7/2020	8/6/2020		8/10/2020	Modified w/Certain Amendments & Approved 12/9/2020			
Agriculture (61-01)	Animal Disease Control Legislative	7/28/2020	8/27/2020		8/27/2020	Approved 12/9/2020			
Agriculture (61-09)	WV Seed Law Legislative	7/28/2020	8/27/2020		8/27/2020	Modified & Approved 12/9/2020 Filed 12/23/2020			
Agriculture (61-16)	Inspection of Meat and Poultry Legislative	7/14/2020	8/13/2020		8/17/2020	Approved 12/9/2020			
Agriculture (61-28)	Poultry Litter and Manure Movement Into Primary Poultry Breeder Rearing Areas Legislative				Sunset Extension 7/27/2020	Approved 12/9/2020			
Agriculture (61-39)	Seed Certification Program Legislative	7/27/2020	8/26/2020		8/26/2020	Modified & Approved 12/9/2020 Filed 12/22/2020			
Agriculture (61-40)	WV Exempted Dairy Farms and Milk and Milk Products Processing Rule Legislative	8/21/2020	9/20/2020		9/21/2020	Approved 12/9/2020			
Air Quality (45-08)	Ambient Air Quality Standards Legislative	6/24/2020	7/28/2020		8/26/2020	Approved 9/25/2020			
Air Quality (45-16)	Standards of Performance for New Stationary Sources Legislative	6/24/2020	7/28/2020		8/26/2020	Approved 9/25/2020			
Air Quality (45-18)	Control of Air Pollution from Combustion of Solid Waste Legislative	6/24/2020	7/28/2020		8/26/2020	Approved 9/25/2020			
Air Quality (45-23)	Control of Air Pollution from Municipal Solid Waste Landfills Legislative	6/24/2020	7/28/2020		8/26/2020	Approved 9/25/2020			
Air Quality (45-33)	Acid Rain Provisions and Permits Legislative	6/24/2020	7/28/2020		8/26/2020	Approved 9/25/2020			
Air Quality (45-34)	Emission Standards for Hazardous Air Pollutants Legislative	6/24/2020	7/28/2020		8/26/2020	Approved 9/25/2020			

RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Air Quality (45-44)	Control of Greenhouse Gas Emissions from Existing Coal-Fired Electric Utility Generating Units Legislative	6/24/2020	7/28/2020		8/26/2020	Modified & Approved 9/25/2020 Filed 9/28/2020			
Alcohol Beverage Control Comm. (175-02)	Private Club Licensing Legislative	6/18/2020	7/20/2020		7/24/2020	Modified & Approved 11/17/2020 Filed 11/18/2020			
Alcohol Beverage Control Comm. (175-10)	Distilleries, Mini-Distilleries and Micro-Distilleries Legislative	6/22/2020	7/23/2020		7/24/2020	Modified & Approved 11/17/2020 Filed 11/18/2020			
Auditor (155-01)	Standards for Requisitions for Payment Issued by State Officers on the Auditor Legislative	7/13/2020	8/13/2020		8/17/2020	Modified & Approved 11/16/2020 Filed 11/19/2020			
Auditor (155-02)	Indexing Of State-Owned Lands Procedural	11/25/2020	12/28/2020					1/29/2021	3/1/2021
Coal Mine Health & Safety (36-01)	Shaft and/or Slope Operations in the State of WV Legislative Exempt	12/14/2020	1/28/2021						
Coal Mine Health & Safety (36-04)	The Movement of Mining Equipment Within Coal Mines in the State of WV Legislative Exempt	10/1/2020	11/16/2020					1/11/2021	2/11/2021
Coal Mine Health & Safety (36-05)	Rule Governing Telephone Service or Communication Facilities Legislative Exempt	12/14/2020	1/28/2021						
Coal Mine Health & Safety (36-10)	Roof Control Legislative Exempt	10/1/2020	11/16/2020					1/11/2021	2/11/2021
Coal Mine Health & Safety (36-12)	Electrical Provisions for Underground Mining Legislative Exempt	10/1/2020	11/16/2020					1/11/2021	2/11/2021
Coal Mine Health & Safety (36-13)	Regulatory Review Procedures Legislative Exempt	10/1/2020	11/16/2020					1/11/2021	2/11/2021

RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Coal Mine Health & Safety (36-14)	Rule Governing Electrical Equipment in Mines; Required Examinations Legislative Exempt	12/14/2020	1/28/2021						
Coal Mine Health & Safety (36-18)	The Responsibility for Care and Maintenance of Equipment Legislative Exempt	10/1/2020	11/16/2020					1/11/2021	2/11/2021
Coal Mine Health & Safety (36-19)	Written Reports of Accidents Legislative Exempt	10/13/2020	11/16/2020					1/11/2021	2/11/2021
Coal Mine Health & Safety (36-20)	Independent Contractors Legislative Exempt	10/13/2020	11/16/2020					1/11/2021	2/11/2021
Coal Mine Health & Safety (36-22)	The Prohibition of Acts Endangering Security of Mines; Search for Intoxicants, Matches, Etc. Legislative Exempt	10/13/2020	11/16/2020					1/11/2021	2/11/2021
Coal Mine Health & Safety (36-24)	The Record Keeping of all Certified Persons Employed in all Mines Throughout the State of WV Legislative Exempt	10/1/2020	11/16/2020					1/11/2021	2/11/2021
Coal Mine Health & Safety (36-25)	Underground Equipment Requirements and Operation Legislative Exempt	12/14/2020	1/28/2021						
Coal Mine Health & Safety (36-26)	Rule Governing Construction and Rehabilitation Operations in Underground Mines Legislative Exempt	12/14/2020	1/28/2021						
Coal Mine Health & Safety (36-27)	Surface Areas on Mine Property and Limitations on Mining Adjacent to Gas Facilities Legislative Exempt	10/1/2020	11/16/2020					1/11/2021	2/11/2021
Coal Mine Health & Safety (36-41)	Additional Requirements for Sheathed Explosive Units Legislative Exempt	10/13/2020	11/16/2020					1/11/2021	2/11/2021
Coal Mine Health & Safety (36-57)	Proximity Detection Systems and Haulage Safety Generally Legislative Exempt	10/1/2020	11/16/2020					1/11/2021	2/11/2021
Development Office (145-07)	Neighborhood Investment Program Act Procedural	7/22/2020	8/28/2020						

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AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Development Office (145-16)	Tourism Development Districts Legislative	7/20/2020	8/21/2020	7/1/2020 Approved 7/2/2020	8/25/2020	Modified & Approved 11/17/2020			
Education (126-161)	Regulations for the Alternative Certification Programs for the Education of Teachers (Policy 5901) Legislative Exempt	1/14/2021	2/16/2021						
Emergency Management (170-04)	SIRN Emergency Purchasing Procedure Procedural	1/29/2021	3/1/2021						
Emergency Management (170-05)	Purchases During States of Emergency Procedural	1/29/2021	3/1/2021						
Environmental Protection – Secretary's Office (60-03)	Voluntary Remediation and Redevelopment Rule Legislative	7/2/2020	8/11/2020		8/25/2020	Modified & Approved 12/9/2020 Filed 12/11/2020			
Financial Institutions, Div. of (106-21)	Rule Pertaining to the Fintech Regulatory Sandbox Legislative	6/26/2020	7/31/2020	6/26/2020 Approved 7/1/2020 Amendment 11/30/2020 Approved 12/16/2020	8/13/2020	Modified & Approved 11/17/2020 Filed 11/30/2020			
Financial Institutions, Div. of (106-22)	Exempt Purchasing Procedural	1/11/2021	2/10/2021						
Fire Commission (87-07)	Standards for the Certification and Continuing Education of Municipal, County, and Other Public Sector Building Code (Repeal) Legislative	6/22/2020	7/22/2020		8/24/2020	Approved 11/16/2020			
Fire Marshal (103-06)	Standards for the Certification and Continuing Education of Municipal, County, and Other Public Sector Building Code Legislative	6/22/2020	7/22/2020		8/13/2020	Approved 11/16/2020			
Funeral Service Examiners (6-01)	Funeral Director, Embalmer, Apprentice, Courtesy Card Holders and Funeral Establishment Requirements Legislative	7/22/2020	8/24/2020		8/26/2020	Modified & Approved 11/16/2020 Filed 11/18/2020			

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AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Funeral Service Examiners (6-02)	Crematory Requirements Legislative	7/22/2020	8/24/2020		8/24/2020	Modified & Approved 11/16/2020 Filed 11/18/2020			
Funeral Service Examiners (6-07)	Fee Schedule Legislative	7/21/2020	8/24/2020		8/24/2020	Modified & Approved 11/16/2020 Filed 11/18/2020			
Health (64-11)	Behavioral Health Centers Licensure Legislative	7/1/2020	7/31/2020		8/25/2020	Modified & Approved 12/9/2020 Filed 1/4/2021			
Health (64-12)	Hospital Licensure Legislative	7/1/2020	7/31/2020		8/21/2020	Approved 12/9/2020			
Health (64-13)	Nursing Home Licensure Legislative	7/1/2020	7/31/2020		8/25/2020	Modified & Approved 12/9/2020 Filed 12/16/2020			
Health (64-45)	Lead Abatement Licensing Legislative	7/2/2020	8/3/2020		8/21/2020	Modified & Approved 11/17/2020 Filed 12/10/2020			
Health (64-48)	Emergency Medical Services Legislative	9/4/2020	10/5/2020	9/4/2020 Approved 9/30/2020 Amendment 10/1/2020 Approved 10/1/2020 Amendment 1/13/2021 Approved 1/13/2021	11/20/2020	Modified & Approved 12/9/2020 Filed 1/4/2021			
Health (64-59)	Patient Rights at State-Operated Mental Health Facilities Legislative	7/1/2020	7/31/2020		8/26/2020	Modified & Approved 12/9/2020 Filed 12/9/2020			

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AGENCY/SERIES NUMBER	**RULE**	**NOTICE**	**HEARING**	**EMER RULE**	**AGENCY APPROVED**	**LRMRC/LOCEA ACTION**	**LEGIS**	**FINAL FILE**	**EFFECTIVE**
Health (64-60)	Delegation of Medication Administration and Health Maintenance Tasks to Approved Medication Assistive Personnel Legislative	7/1/2020	7/31/2020		8/21/2020	Modified & Approved 12/9/2020 Filed 12/16/2020			
Health (64-114)	Public Health Standards for Businesses Remaining Open During the COVID-19 Outbreak Legislative	5/15/2020 5/18/2020	6/15/2020 6/17/2020	4/16/2020 Approved 4/16/2020 Amendment 4/21/2020 Approved 4/21/2020 Amendment 5/15/2020 Approved 5/15/2020 Amendment 1/13/2021 Approved 1/13/2021	8/28/2020	Modified & Approved 12/9/2020 Filed 12/15/2020			
Health (64-115)	Diabetes Self-Management Education Legislative	7/2/2020	8/3/2020		8/26/2020	Modified & Approved 11/17/2020 Filed 11/20/2020			
Health and Human Resources (69-10)	WV Clearance for Access: Registry and Employment Screening Legislative	7/1/2020	7/31/2020		8/21/2020	Modified & Approved 11/17/2020 Filed 11/20/2020			
Health and Human Resources (69-15)	Recovery Residence Certification and Accreditation Program Legislative	5/8/2020	6/8/2020	4/29/2020 Effective 6/10/2020	7/1/2020	Modified & Approved 12/9/2020 Filed 12/9/2020			
Health Care Authority (65-29)	Exemption from Certificate of Need Legislative	8/24/2020	9/23/2020		9/28/2020	Approved 12/9/2020			
Hearing Aid Dealers (8-01)	Rule Governing the WV Bd. Of Hearing Aid Dealers Legislative	7/21/2020	8/22/2020		8/28/2020	Modified & Approved 11/16/2020 Filed 12/1/2020			
Higher Education Policy Comm. (133-63)	Mental Health Loan Repayment Program Legislative	6/26/2020	7/27/2020	6/26/2020 Effective 6/26/2020	7/29/2020				

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AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Higher Education Policy Comm. (133-64)	Administrative Exemption Legislative	11/20/2020	12/21/2020						
Highways (157-01)	Rules Relating Generally to Various Functions of the Commissioner of Highways Procedural	11/17/2020	12/18/2020						
Highways (157-05)	Traffic and Safety Rules Legislative	7/28/2020	8/28/2020		8/28/2020	Approved 11/17/2020			
Highways (157-14)	Contract Administration Purchasing Process Procedural	12/14/2020	1/14/2021						
Human Services (78-02)	Child Placing Agencies Licensure Legislative	7/1/2020	7/31/2020		8/25/2020	Modified & Approved 12/9/2020 Filed 12/16/2020			
Human Services (78-03)	Minimum Licensing Requirements for Residential Child Care and Treatment Facilities for Children and Transitioning Adults and Vulnerable and Transitioning Youth Group Homes and Programs in WV Legislative	7/1/2020	7/31/2020		8/25/2020	Modified & Approved 12/9/2020 Filed 12/15/2020			
Human Services (78-27)	Procedure to Contest the Substantiation of Child Abuse or Neglect Legislative	7/1/2020	7/31/2020		8/26/2020	Modified & Approved 12/9/2020 Filed 12/15/2020			
Insurance Comm. (114-02A)	Fingerprinting Requirements for Applicants for Insurance Producer License and Insurance Adjuster License Legislative	6/18/2020	7/24/2020		7/27/2020	Modified & Approved 9/25/2020 Filed 9/30/2020			
Insurance Comm. (114-25)	Insurance Adjusters Legislative	6/18/2020	7/24/2020		7/27/2020	Modified & Approved 9/25/2020 Filed 9/30/2020			
Insurance Comm. (114-40)	Credit for Reinsurance Legislative	6/18/2020	7/24/2020		7/27/2020	Modified & Approved 9/25/2020 Filed 9/30/2020			

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AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Insurance Comm. (114-42)	Continuing Education for Individual Insurance Producers and Individual Insurance Adjusters Legislative	6/18/2020	7/24/2020		7/27/2020	Approved 9/25/2020			
Insurance Comm. (114-64)	Mental Health Parity Legislative	6/22/2020	7/24/2020		8/11/2020	Modified & Approved 9/25/2020 Filed 9/30/2020			
Insurance Comm. (114-100)	Health Benefit Plan Network Access and Adequacy Legislative	6/22/2020	7/24/2020		8/11/2020	Modified & Approved 11/16/2020 Filed 11/17/2020			
Insurance Comm. (114-101)	Exempt Purchasing Procedural	12/30/2020	2/1/2021					2/2/2021	3/4/2021
Labor (42-03)	Steam Boiler Inspection Legislative	7/16/2020	8/17/2020		8/24/2020	Modified w/Certain Amendments & Approved 12/9/2020			
Landscape Architects (9-01)	Registration of Landscape Architects Legislative	7/23/2020	8/24/2020		8/27/2020	Modified & Approved 11/16/2020 Filed 12/1/2020			
Landscape Architects (9-04)	Application for Waiver of Initial Licensing Fees for Certain Individuals Legislative	7/23/2020	8/24/2020		8/26/2020	Modified & Approved 11/16/2020 Filed 12/23/2020			
Livestock Care Standards Bd. (73-01)	Livestock Care Standards Legislative	7/21/2020	8/20/2020		8/21/2020	Approved 12/9/2020			
Lottery (179-10)	WV Lottery Interactive Wagering Rule Legislative	6/11/2020	7/11/2020	5/15/2020 Approved 5/18/2020	8/10/2020	Modified & Approved 12/9/2020 Filed 12/21/2020			
Medicine (11-14)	Registration to Practice During Declared State of Emergency Legislative	4/23/2020	5/23/2020	3/26/2020 Approved 3/26/2020	6/24/2020	Approved 11/16/2020			

RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Miners' Health Safety and Training (56-08)	The Submission and Approval of a Comprehensive Mine Safety Program for Coal Mining Operations in the State of WV Legislative	7/14/2020	8/13/2020		8/19/2020	Approved 11/17/2020			
Motor Vehicles (91-04)	Examination and Issuance of Driver's License Legislative	7/8/2020	8/9/2020		8/11/2020	Modified & Approved 9/25/2020 Filed 9/29/2020			
Motor Vehicles (91-05)	Denial, Suspension, Revocation, Disqualification, Restriction, Non-Renewal, Cancellation, Administrative Appeals and Reinstatement of Driving Privileges Legislative	7/15/2020	8/17/2020		8/19/2020	Approved 9/25/2020			
Motor Vehicles (91-13)	Compulsory Motor Vehicle Liability Insurance Legislative	7/29/2020	8/28/2020		8/28/2020	Modified & Approved 9/25/2020 Filed 9/29/2020			
Motor Vehicles (91-25)	Special Purpose Vehicles Legislative	7/1/2020	7/31/2020		8/7/2020	Modified & Approved 11/16/2020 Filed 11/17/2020			
Municipal Pensions Oversight Bd. (211-02)	Exempt Purchasing Legislative	6/26/2020	7/27/2020		8/7/2020	Modified & Approved 11/17/2020 Filed 11/17/2020			
Natural Resources (58-36)	Cabwaylingo State Forest Trail System Two Year Pilot Project Permitting ATVs and ORVs Legislative				Sunset Extension 2/26/2020	Approved 9/25/2020			
Natural Resources (58-46)	Defining the Terms Used in All Hunting and Trapping Legislative	7/29/2020	8/28/2020		8/28/2020	Approved 9/25/2020			
Natural Resources (58-50)	Deer Hunting Rule Legislative	7/29/2020	8/28/2020		8/28/2020	Modified & Approved 9/25/2020 Filed 9/29/2020			

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AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Natural Resources (58-56)	Special Migratory Game Bird Hunting Legislative	7/29/2020	8/28/2020		8/28/2020	Approved 9/25/2020			
Natural Resources (58-58)	Special Waterfowl Hunting Legislative	7/29/2020	8/28/2020		8/28/2020	Approved 9/25/2020			
Occupational Therapy (13-09)	Telehealth Practice; Requirements; Definitions Legislative	6/15/2020	8/1/2020		8/10/2020	Approved 11/16/2020			
Osteopathic Medicine (24-01)	Licensing Procedures for Osteopathic Physicians Legislative	7/28/2020	8/28/2020	7/28/2020 Effective 9/8/2020	8/28/2020	Modified & Approved 11/16/2020 Filed 11/23/2020			
Osteopathic Medicine (24-09)	Emergency Temporary Permits to Practice During States of Emergency or State of Preparedness Legislative	4/15/2020	5/15/2020	3/26/2020 Approved 3/26/2020	6/22/2020	Modified & Approved 11/16/2020 Filed 11/23/2020			
Pharmacy (15-01)	Licensure and Practice of Pharmacy Legislative	4/30/2020	5/31/2020	4/30/2020 Approved 4/30/2020 Amendment 8/26/2020 Effective 10/7/2020	6/5/2020				
Pharmacy (15-01)	Licensure and Practice of Pharmacy Legislative	7/22/2020	8/21/2020		8/26/2020	Approved 11/16/2020			
Pharmacy (15-02)	Uniform Controlled Substances Act Legislative	4/30/2020	5/31/2020	4/1/2020 Approved 4/1/2020	6/5/2020				
Pharmacy (15-02)	Uniform Controlled Substances Act Legislative	7/22/2020	8/21/2020		8/26/2020	Modified & Approved 11/16/2020 Filed 12/2/2020			
Pharmacy (15-03)	Continuing Education for Licensure of Pharmacists Legislative	7/22/2020	8/21/2020		8/26/2020	Modified & Approved 11/16/2020 Filed 12/2/2020			

RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Pharmacy (15-05)	Licensure of Wholesale Drug Distributors, Third Party Logistics Providers, and Manufacturers Legislative	7/22/2020	8/21/2020		8/26/2020	Modified & Approved 11/16/2020 Filed 12/2/2020			
Pharmacy (15-08)	Controlled Substances Monitoring Program Legislative	7/22/2020	8/21/2020		8/26/2020	Modified & Approved 11/16/2020 Filed 12/2/2020			
Pharmacy (15-12)	Immunizations Administered by Pharmacist and Pharmacy Interns Legislative	5/1/2020 7/22/2020	6/2/2020 8/21/2020	4/20/2020 Approved 4/20/2020	6/5/2020 9/4/2020	Modified & Approved 11/16/2020 Filed 12/2/2020			
Physical Therapy (16-01)	General Provisions for Physical Therapist and Physical Therapist Assistants Legislative	9/17/2020	10/19/2020		10/19/2020	Modified & Approved 12/9/2020 Filed 12/18/2020			
Physical Therapy (16-04)	Fees for Physical Therapist and Physical Therapist Assistant Legislative	7/28/2020	8/27/2020		8/28/2020	Modified & Approved 12/9/2020 Filed 12/16/2020			
Physical Therapy (16-05)	General Provisions for Athletic Trainers Legislative	9/17/2020	10/19/2020		10/19/2020	Modified & Approved 12/9/2020 Filed 12/21/2020			
Physical Therapy (16-06)	Fees for Athletic Trainers Legislative	7/29/2020	8/28/2020		8/28/2020	Modified & Approved 12/9/2020 Filed 12/16/2020			
Professional Surveyors (23-01)	Examination and Licensing of Professional Surveyors in WV Legislative	7/13/2020	8/14/2020		8/24/2020	Modified & Approved 11/16/2020 Filed 11/19/2020			
Public Service Commission (150-02)	Rules for the Construction and Filing of Tariffs Legislative Exempt	8/4/2020	10/5/2020						

RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Public Service Commission (150-05)	Rules for the Government of Sewer Utilities Legislative Exempt	11/10/2020	1/11/2021 Extended to 1/18/2021						
Public Service Commission (150-07)	Rules for the Government of Water Utilities Legislative Exempt	11/10/2020	1/11/2021 Extended to 1/18/2021						
Public Service Commission (150-09)	Rules Governing Motor Carriers, Private Commercial Carriers, and the Filing of Evidence of Insurance and Financial Responsibility by Motor Carriers Legislative Exempt	8/4/2020	10/5/2020						
Public Service Commission (150-16)	Rules Governing the Transportation of Natural Gas Legislative Exempt	10/7/2020	11/16/2020						
Racing Commission (178-01)	Thoroughbred Racing Legislative	6/18/2020	7/20/2020		8/21/2020	Modified & Approved 12/9/2020			
Racing Commission (178-02)	Greyhound Racing Legislative	6/18/2020	7/20/2020		8/17/2020	Approved 12/9/2020			
Racing Commission (178-10)	Advance Deposit Account Wagering (ADW) Legislative	7/1/2020	7/31/2020	7/1/2020 Approved 7/1/2020	8/17/2020	Modified & Approved 12/9/2020			
Real Estate Commission (174-01)	Licensing Real Estate Brokers, Associate Brokers, and Salespersons and the Conduct of Brokerage Business Legislative	7/21/2020	8/20/2020		8/24/2020	Modified & Approved 12/9/2020 Filed 12/11/2020			
Rehabilitation Services (198-01)	Ron Yost Personal Assistance Services Act Bd. Legislative	7/24/2020	8/26/2020		8/26/2020	Approved 12/9/2020			
Respiratory Care (30-01)	Criteria for Licensure Legislative	7/20/2020	8/21/2020		8/26/2020	Modified & Approved 11/16/2020 Filed 11/17/2020			
Risk and Insurance Management (115-01)	Mine Subsidence Insurance Legislative	7/9/2020	8/8/2020		8/18/2020	Approved 11/17/2020			

RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Risk and Insurance Management (115-02)	Public Entities Insurance Program Legislative	7/9/2020	8/8/2020		8/18/2020	Modified & Approved 11/17/2020 Filed 11/30/2020			
Risk and Insurance Management (115-05)	Procedure for Providing Written Notification of Claims of Potential Liability to the State or Its Employees (Repeal) Legislative	7/9/2020	8/8/2020		8/18/2020	Approved 11/17/2020			
School Building Authority (164-01)	Policy and Procedures Handbook of the School Building Authority of West Virginia Procedural	12/16/2020	1/19/2021						
Secretary of State (153-07)	Submission of Other Documents to Solicit Contributions for Charitable Organizations Interpretive	12/7/2020	1/8/2021						
Secretary of State (153-10)	Loan and Grant Programs Under the Help America Vote Act (HAVA) for the Purchase of Voting Equipment, Election Systems, Software, Services and Upgrades Legislative	4/24/2020	5/29/2020	3/25/2020 Amendment 4/24/2020 Amendment 4/27/2020 Effective 6/8/2020	6/23/2020	Modified & Approved 11/17/2020 Filed 12/4/2020			
Secretary of State (153-45)	Guidelines and Standards for Electronic Notarization Legislative	4/30/2020	6/1/2020	3/27/2020 Amendment 3/31/2020 Approved 4/1/2020	6/25/2020	Modified & Approved 11/17/2020 Filed 12/4/2020			
Secretary of State (153-53)	Election Processes and Absentee Eligibility During State of Emergency			3/20/2020 Effective 3/20/2020					
Senior Services (76-06)	Shared Table Initiative for Senior Citizens Legislative	7/24/2020	8/24/2020		8/25/2020	Modified & Approved 11/17/2020 Filed 11/30/2020			
State Emergency Response Comm. (55-01)	Emergency Planning and Community Right to Know Legislative	7/13/2020	8/12/2020		8/28/2020	Approved 11/16/2020			
State Emergency Response Comm. (55-02)	Emergency Planning Grant Program Legislative	7/13/2020	8/12/2020		8/28/2020	Approved 11/16/2020			

RULE MONITOR

AGENCY/SERIES NUMBER	RULE	NOTICE	HEARING	EMER RULE	AGENCY APPROVED	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Tax (110-13FF)	Tax Credit for Providing Vehicles to Low-Income Workers Legislative	6/22/2020	7/22/2020		8/17/2020	Modified & Approved 9/25/2020 Filed 10/5/2020			
Tax (110-13GG)	Downstream Natural Gas Manufacturing Investment Tax Credit Legislative	6/22/2020	7/22/2020		7/29/2020	Approved 12/9/2020			
Tax (110-13II)	High-Wage Growth Business Tax Credit Legislative	6/22/2020	7/22/2020		7/29/2020	Modified & Approved 9/25/2020 Filed 10/5/2020			
Waste Mgmt., Div. of Water & Waste Mgmt. (33-20)	Hazardous Waste Management System Legislative	7/8/2020	8/11/2020		8/25/2020	Approved 9/25/2020			
Water Resources Division of Water and Waste Management (47-02)	Requirements Governing Water Quality Standards Legislative	3/31/2020	5/19/2020		8/17/2020	Modified & Approved 12/9/2020 Filed 12/22/2020			

WEST VIRGINIA SECRETARY OF STATE
MAC WARNER
ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

PROCEDURAL

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE EXEMPT, INTERPRETIVE OR PROCEDURAL RULE

AGENCY: Auditor TITLE-SERIES: 155-02

RULE TYPE: Procedural Amendment to Existing Rule: No Repeal of existing rule: No

RULE NAME: INDEXING OF STATE-OWNED LANDS

CITE STATUTORY AUTHORITY: 14-1-21(c)

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

March 1, 2021

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

Yes
Stephen R Connolly -- 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.

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NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Emergency Management TITLE-SERIES: 170-04

RULE TYPE: Procedural Amendment to Existing Rule: No Repeal of existing rule: No

RULE NAME: SIRN Emergency Purchasing Procedure

CITE STATUTORY AUTHORITY: 5A-3-3a

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 03/01/2021 4:00

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: GE McCabe

ADDRESS: 2403 Fairlawn Avenue

Dunbar, WV 25064

EMAIL: ge.mccabe@wv.gov

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

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PROCEDURAL

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Emergency Management TITLE-SERIES: 170-05

RULE TYPE: Procedural Amendment to Existing Rule: No Repeal of existing rule: No

RULE NAME: Purchases During States of Emergency

CITE STATUTORY AUTHORITY: 5A-3-3c

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 03/01/2021 4:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: GE McCabe

ADDRESS: 2403 Fairlawn Avenue

Dunbar, WV 25064

EMAIL: ge.mccabe@wv.gov

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

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Secretary Of State

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE EXEMPT, INTERPRETIVE OR PROCEDURAL RULE

AGENCY: Insurance Commission TITLE-SERIES: 114-101

RULE TYPE: Procedural Amendment to Existing Rule: No Repeal of existing rule: No

RULE NAME: Exempt Purchasing

CITE STATUTORY AUTHORITY: W. Va. Code §5A-1-12, W. Va. Code §23-1-1f, W.Va. Code §23-1-1g, W. Va. Code §33-2-9, W. Va. Code §33-2-21a, W. Va. Code §33-4A-3, and W. Va. Code §33-20E-7.

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

March 4, 2021

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

Yes

Allen R Prunty -- 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.

Orders Report

Docket Number	Agency	Respondent	Date Rendered

None Received This Week

2/4/2021 2:20:34 PM

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OFFICE WEST VIRGINIA
SECRETARY OF STATE
AG OPINION

State of West Virginia
Office of the Attorney General

Patrick Morrisey
Attorney General

(304) 558-2021
Fax (304) 558-0140

January 29, 2021

The Honorable Kent Leonhardt
State Commissioner of Agriculture
1900 Kanawha Blvd. East
Building 1, Room E-28
Charleston, West Virginia 25305

Dear Commissioner Leonhardt:

In your capacity as Chairman of the State Conservation Committee, you have asked for an Opinion of the Attorney General about the authority of the State Conservation Committee ("SCC") and the West Virginia Conservation Agency ("SCA") to administer Clean Water Act funding. This Opinion is being issued pursuant to West Virginia Code § 5-3-1, which provides that the Attorney General "shall give written opinions and advise upon questions of law . . . whenever required to do so, in writing, by . . . any . . . state officer, board, or commission." Where this Opinion relies on facts, it depends solely on the factual assertions in your correspondence with the Office of the Attorney General.

In 1987, Congress enacted Section 319 of the Clean Water Act, 33 U.S.C. § 1329. Under Section 319(h), the Environmental Protection Agency "shall make grants" to States "for the purpose of assisting the State in implementing" its nonpoint source pollution-management program. In 2019, EPA awarded over $165 million in grants under Section 319. *See 319 Grant Program for States and Territories*, U.S. Envtl. Prot. Agency, https://bit.ly/2G6jemJ (accessed Jan. 28, 2021). The West Virginia Department of Environmental Protection ("DEP") applies for Section 319 grants, and DEP has designated the SCC to administer them in order to help conserve and restore West Virginia waters affected by nonpoint source pollution from agricultural and construction activities.

Since the early 2000s, the SCC has, through the SCA (the administrative officer and support staff of the SCC, W. Va. Code § 19-21A-4(e)), administered Section 319 grants by providing the funds to local conservation districts. The local conservation districts either complete

the projects themselves or pass the funds on to a different agency to finish the specific project. Both DEP and EPA ultimately approve all projects funded in this way as part of the grant process. Various questions have recently arisen regarding this process for distributing Section 319 grants. Your letter seeks advice on the SCC's authority to receive Section 319 grants for purposes of improving water quality. Your letter also asks whether the SCC has power to pass those funds on to local conservation districts, and which entities may perform the projects Section 319 grant money is intended to fund.

Your request thus raises two questions of state law:

1. *May the SCC receive Clean Water Act grants used to improve water quality?*

2. *May the SCC give Clean Water Act grants to conservation districts, and if so, is the SCC required to work through conservation districts as opposed to implementing projects directly or working with other entities?*

We conclude that although some language in the governing Code section could be interpreted to allow Section 319 funds to be used for improving water quality, other text and statutory context make this outcome uncertain; seeking clarification from the Legislature is the strongest path forward. With respect to your second question, we conclude that authority to accept Clean Water Act grants for appropriate purposes includes the power to pass grants on to conservation districts. Alternatively, the SCC can use the funds itself or pay non-governmental agencies to perform the conservation projects.

Discussion

Question 1: The SCC's Governing Statute Does Not Conclusively Authorize Using Section 319 Funds For Water-Improvement Projects

The SCC may exercise only those powers that the Legislature delegates to it. Here, the SCC's governing powers are described in West Virginia Code Chapter 19, Article 21A. *See* W. Va. Code § 19-21A-4(a). These powers expressly include the ability to accept grants "from the United States or any of its agencies" to "carry[] out the policy and provisions of this article." *Id.* § 19-21A-4(g)(9). Further, the SCC has power to determine the SCA's duties, W. Va. Code § 19-21A-4(e), and may therefore designate the SCA to receive and administer federal grants like those issued under Section 319.

These provisions make clear that, as a general matter, the SCA may receive and use federal grants. The critical question is thus whether the purposes your letter identifies—water-improvement and pollution-reducing projects aimed at the State's water resources—are part of the "policy and provisions of this article." W. Va. Code § 19-21A-4(g)(9). The statutory language is

not clear on this point; although there is a good argument these purposes may be included, a reviewing court may interpret the SCC's authority more narrowly.*

The strongest language supporting a broad reading of the statute comes from Section 19-21A-2, which declares it "the policy of the Legislature" to—among other goals—"further[] the conservation, development, utilization and disposal of water, and thereby to preserve natural resources, . . . assist in maintaining the navigability of rivers and harbors, . . . and promote the health, safety and general welfare of the people of West Virginia." W. Va. Code § 19-21A-2(d). Read in isolation, there is a fair argument that programs aimed at reducing pollution in state waters relate to the "conservation" of water, which in turn can protect the State's "natural resources," *id.*, maintain navigability of state waterways, and encourage health and safety. *See, e.g., Pronsolino v. Nastri*, 291 F.3d 1123, 1138 (9th Cir. 2002) (explaining that Section 319 grants help States control nonpoint source pollution to enhance water quality in navigable waters). The statute does not define the key term—"conservation"—as it relates to water, meaning courts must give the term its "common, ordinary and accepted meaning." Syl. pt. 1, *Miners in Gen. Grp. v. Hix*, 123 W. Va. 637, 17 S.E.2d 810 (1941), *overruled on other grounds by Lee–Norse Co. v. Rutledge*, 170 W. V a. 162, 291 S.E.2d 477 (1982). And in the context of environmental regulations, water "conservation" would commonly be understood to include pollution control and reduction. *See Conservation*, Black's Law Dictionary (11th ed. 2019) (defining "conservation" of "natural resources" to include "maintenance," "protection," and "improvement").

Nevertheless, the overall structure of the SCC's enabling statutes do not suggest that its mission sweeps broadly enough to encompass addressing pollution in the State's waters. Indeed, the relevant statute does not use the term "pollution," instead repeatedly emphasizing *land-based* conservation goals. The statute's discussion of conserving water resources most often focuses on water's consequences for state lands, not the purity of the water itself. The statute specifically defines "*soil* conservation," for instance, rather than including water conservation in this broad definition. W. Va. Code § 19-21A-3(10) (emphasis added). It describes "conservation of the soil and soil resources of this state" and "control and prevention of soil erosion" as key purposes of the statute. *Id.* § 19-21A-2(d). And it discusses water most often in terms of preventing and mitigating flooding—that is, circumstances where water damages the land and soil resources. *E.g., id.* § 19-21A-2(a) (describing concerns from "erosion by water and flooding" in legislative purposes

* This letter takes no position on how the SCC's authority to engage in water quality projects interacts with other state agencies' powers. For example, the Director of Water and Waste Management Division for the DEP is the "sole person to give approval[s] or recommendation[s]" required by federal laws in "any matter relating to the water resources of the state." W. Va. Code §§ 22-11-3, 7. Thus, if the SCC is authorized to obtain and use Section 319 grants, it would still need to "cooperate" with the Director in this process. *See id.* (authorizing the Director to "cooperate" with "interested parties" to "apply for and receive" federal water quality funds).

AG OPINION

section of statute), (b)-(c) (emphasizing damages from flood waters), (d) (including "prevention of floodwater and sediment damage" as legislative policy).

Moreover, the Legislature *has* spoken directly to issues of water quality in other statutes—most notably the West Virginia Water Pollution Control Act, W. Va. Code § 22-11-1 *et seq.* This statute describes DEP's duties to help preserve the "purity" and "quality" of state waters, and includes definitions of terms of art from the Clean Water Act, like "point source" and "pollutant." *Id.* §§ 22-11-2(a), 22-11-3(15)-(16). As a general matter, courts "presume the Legislature would not" enact a "redundant" statute. *Newark Ins. Co. v. Brown*, 218 W. Va. 346, 352, 624 S.E.2d 783, 789 (2005). The existence of a lengthy, detailed, and intricate statutory scheme governing water quality regulation in Chapter 22 therefore could be read to suggest that the Legislature did not intend to create a second, overlapping regulatory system through a single reference to "water conservation."

The upshot is that there is a fair reading of the SCC's governing statute that authorizes water-improvement projects, but without a statutory definition of water "conservation" to make that outcome certain, a reviewing court might conclude from contextual cues that the Legislature intended the term to have a more narrow effect. The surest course forward may thus be to seek clarification from the Legislature. Adding language to the SCC's governing statute that specifically encompasses preventing and remedying pollution in state waters and helping ensure the quality of the state's water resources—not only with respect to flooding concerns—would resolve this statutory ambiguity.

Question 2: Conservation Districts May Receive Section 319 Grant Funds From The SCC, But The SCC Also Retains Discretion To Implement Projects Directly Or To Work With Other Entities.

Your letter next asks whether, in cases where the SCC has power to receive and administer Section 319 grants, the SCC may pass these funds on to local conservation districts as sub-recipients. Among the conservation districts' statutory powers is the ability "[t]o develop with the approval of [the SCC] comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion and for flood prevention or the conservation, development, utilization and disposal of water within the district." W. Va. Code § 19-21A-8(8). As explained above, this language may, but does not conclusively, authorize using Section 319 grants for water-improvement projects. Our Office explained in an opinion to the SCC five years ago that the "vast majority" of conservation districts' powers relate to "collecting information related to soil erosion, floodwater, and sediment damage; remedying identified problems; or preventing future problems." 2015 WL 336264, *2 (Jan. 20, 2015). In this context, too, legislative clarification about whether this power extends to pollution-reducing measures for water resources would thus be advisable.

Moving beyond the specific purposes for which Section 319 funds can be used, however, it is clear that conservation districts may be sub-recipients of a Section 319 grant. State law

confirms that the SCC may "[s]ecure the cooperation and assistance of the United States and any of its agencies and of agencies of this state in the work of the [conservation] districts." W. Va. Code § 19-21A-4(g)(6). Obtaining Section 319 grants and then distributing those funds to the conservation districts is a straightforward application of the SCC's ability to work with federal agencies and "[s]ecure" their "assistance" in the conservation districts' work. *Id.*

Similarly, the SCC may "[a]dminister a conservation grant program that provides financial assistance to conservation districts and others to promote approved conservation projects." W. Va. Code § 19-21A-4(g)(8). There is no requirement in this provision that funding for "a conservation grant program" come from State coffers. Especially when combined with the directive in Section 4(g)(6) to work with federal agencies, this provision confirms that conservation districts may serve as sub-recipients of Section 319 grants that the SCA administers.

This power to pass funds on to local conservation districts does not, however, mean that the SCC may not use grant funds directly, or in concert with other entities in the State. The SCC has express authority to "[a]ccept and receive . . . grants . . . from the United States or any of its agencies . . . and *use or expend* the money . . . in carrying out the policy and provisions of this article." W. Va. Code § 19-21A-4(g)(9) (emphasis added). This language makes clear that, as long as a grant's project falls within the "policy and provisions of this article," the SCC retains authority to use federal funds directly. Similarly, Section 19-21A-4(g)(8) authorizes the SCC to "[a]dminister a conservation grant program that provides financial assistance to conservation districts *and others* to promote approved conservation projects." The plain reading of this provision accordingly affirms that the SCC need not select conservation districts as the sub-recipients of Section 319 grants. Rather, the SCC may work with "others"—a broad term without additional statutory limits—to promote approved conservation projects.

AG OPINION

Thus, assuming the SCC has the authority to use Section 319 grants, it also has authority to control how it expends them: on its own, in partnership with local conservation districts, or by designating other governmental or non-governmental organizations as sub-recipients of federal grant funds.

Sincerely,

Patrick Morrisey
Attorney General

Lindsay See
Solicitor General

Thomas Lampman
Assistant Solicitor General

WEST VIRGINIA HEALTH CARE AUTHORITY
CERTIFICATE OF NEED
100 Dee Drive
Charleston, West Virginia 25311-1600

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2021 FEB -1 A 10:50
OFFICE WEST VIRGINIA SECRETARY OF STATE

OTHER

February 1, 2021

LEGAL NOTICE

The West Virginia Health Care Authority announces the following Certificate of Need activities for the week ending **January 29, 2021**.

CERTIFICATE OF NEED APPLICATION RECEIVED

January 25, 2021 - Cabell Huntington Hospital, Inc., Huntington, Cabell County, CON File #21-2-12014-H, for the construction of an outpatient medical office building on the hospital campus and related renovations to the hospital; capital expenditure: $51,045,000.

APPLICATIONS FOR EXEMPTION RECEIVED

January 25, 2021 – St. George Medical Clinic, Inc., Parsons, Tucker County, CON File #21-7-12026-X, for the development of the St. George Pharmacy to be located at 221 Pennsylvania Avenue, Parsons.

January 26, 2021 – Mountain Care Network, Charleston, Kanawha County, CON File #21-3-12027-X, for the development of a licensed behavioral health center at 5476 Big Tyler Road, Suite 2, Cross Lanes, Kanawha County.

January 27, 2021 – Elkins Regional Convalescent Center, Inc. and Mountain Memories Assisted Living & Retirement Center, LLC, Elkins, Randolph County, CON File #21-7-12028-X, for the acquisition of the assets currently being used to operate Colonial Place Assisted Living and Memory Care and to operate an assisted living facility at the same location.

HEARING NOTICE

The Administrative Hearing and Prehearing Conference have been SCHEDULED in the following matter:

January 26, 2021 - Kanawha Hospice Care, Inc., Charleston, Kanawha County, CON File #20-3-11992-Z, for the provision of home health services in Putnam County; capital expenditure: $29,000.

Prehearing Conference: **April 16, 2021 at 1:30 p.m.**
Administrative Hearing: **April 23, 2021 at 9:00 a.m.**

The prehearing conference and administrative hearing in the above-referenced matter will be held in the offices of the Health Care Authority, 100 Dee Drive, Charleston, West Virginia 25311-1600, unless otherwise noted.

HEARING ORDER ISSUED

January 26, 2021 - Kanawha Hospice Care, Inc., Charleston, Kanawha County, CON File #20-3-11992-Z, for the provision of home health services in Putnam County; capital expenditure: $29,000.

PROJECTS DETERMINED NOT REVIEWABLE

January 29, 2021 – Alpha Health Links LLC, Harpers Ferry, Jefferson County, CON File #20-WV-12010-X, for the development of private pay in-home personal care services, initially in the West Virginia panhandle but eventually state-wide; no capital expenditure.

January 29, 2021 – Amedisys West Virginia, L.L.C., Baton Rouge, Louisiana, CON File #21-1-12018-X, for the development of an administrative hospice office in McDowell County; no capital expenditure.

PROJECT EXEMPT FROM REVIEW

January 27, 2021 - Beautiful Minds Counseling Center, LLC, Princeton, Mercer County, CON File #20-1-12007-X, for the development of a licensed behavioral health center in Princeton, Mercer County.

CERTIFICATE OF NEED APPROVAL ISSUED

January 27, 2021 - Home Care Assistance, Barboursville, Cabell County, CON File #20-3-11919-PC, for the provision of in-home personal care services in Kanawha County; capital expenditure: $1,500.

RENEWAL GRANTED

January 25, 2021 - West Virginia University Hospitals-East, Morgantown, Monongalia County, CON File #06-9-8255-H, for the implementation of a Facility Strategic Plan; capital expenditure: $41,515,000.

Renewal granted through December 31, 2021.

NOTICE OF SUBSTANTIAL COMPLIANCE

The following project has been implemented in substantial compliance with the decision issued in this matter and the case file is now closed:

January 29, 2021 - Charleston Area Medical Center, Inc., Charleston, Kanawha County, CON File #20-4-11917-H, for the provision of physician services at Greenbrier

Valley Medical Center located at 1320 Maplewood Avenue, Ronceverte, Greenbrier County; no capital expenditure.

NOTICES OF CONDITIONAL SUBSTANTIAL COMPLIANCE

The following projects have been implemented in conditional substantial compliance pending the submission of final cost figures:

January 25, 2021 - VOCA Corporation of West Virginia, Inc., Louisville, KY, CON File #18-1-11442-BH, for the development of a four-bed intermediate care facility for individuals with intellectual disabilities (ICF/IID) in Wyoming County serving children; capital expenditure: $45,000.

January 25, 2021 - RSCR West Virginia, Inc., Louisville, KY, CON File #18-7-11445-BH, for the development of a four-bed intermediate care facility for individuals with intellectual disabilities (ICF/IID) in Barbour County serving adults; capital expenditure: $45,000.

Further information may be obtained on any of the above-referenced projects by contacting Barbara Skeen, Director, Certificate of Need Division.

OTHER

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STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
WV Health Care Authority

Bill J. Crouch
Cabinet Secretary

Barbara Skeen
Interim Executive Director

NOTICE OF REVIEW

FOR IMMEDIATE RELEASE

February 1, 2021

NEWS ITEM

The Health Care Authority (Authority), pursuant to the Certificate of Need program, has declared complete and accepted for review the expedited applications referenced below:

January 27, 2021 - Cabell Huntington Hospital, Inc., Huntington, Cabell County, CON File #21-2-12014-H, for the construction of an outpatient medical office building on the hospital campus and related renovations to the hospital; capital expenditure: $51,045,000.

January 29, 2021 - Pegasus Healthcare, LLC d/b/a Pegasus Home Healthcare, LLC, Morgantown, Monongalia County, CON File #20-6-11980-Z, for the development of a home health agency in Morgantown, Monongalia County; no capital expenditure.

An application that has been declared complete is one in which there is sufficient information for the Authority to make an informed decision. It does not mean that the approval of the application is warranted.

The review cycle begins on **January 29, 2021**.

On or before **March 1, 2021**, any affected person has the right to request that the Authority hold a public hearing on the projects as part of the review. If a public hearing is conducted during the course of the review, a notice of hearing, specifying the date, time and location of the hearing, will be issued to affected persons.

If no public hearing is requested, the file closing date will be **March 5, 2021**. After that date, no further information or evidence will be accepted by the Authority for the remainder of the review of the applications.

100 Dee Drive • Charleston, West Virginia 25311-1600 • 304.558.7000 • 304.558.4776/Fax • www.hca.wv.gov

The Decision on the projects referenced above will be issued by the Authority after it has reviewed the contents of the case files of the projects, including the application, additional information submitted to the Authority during the review, and the record of any Authority public hearing. If there is no request for public hearing, the Decisions will be issued on or before **March 20, 2021**.

A press release will be issued after the decisions are made. Anyone wishing to be directly notified of the Decisions should submit a written request to Barbara Skeen, Director, Certificate of Need, Health Care Authority, 100 Dee Drive, Charleston, West Virginia, 25311-1600. Further information on any project referenced in this news release may be obtained by contacting the Certificate of Need office at telephone number (304) 558-7000.

2/1/21
Date

Barbara Skeen
Barbara Skeen, Director, Certificate of Need
Health Care Authority

OTHER

THE WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS
CHARLESTON, WEST VIRGINIA

ABSTRACT FROM THE RECORDS OF THE COMMISSIONER'S ORDERS

DATED

February 1, 2021

OFFICE WEST VIRGINIA SECRETARY OF STATE
2021 FEB -2 A 11: 20
FILED

WHEREAS, Chapter 17, Article 2A, Section 4, of the Official Code of West Virginia, 1931, as amended, authorizes the Commissioner of Highways to be in charge of the selection and the effective organization of all West Virginia Division of Highways personnel; and

WHEREAS, Chapter 17, Article 2A, Section 8, of the Official Code of West Virginia, 1931, as amended, authorizes the Commissioner of Highways to promulgate rules for the efficient administration of the State road program; and

WHEREAS, to provide for the proper and efficient transaction of business within the West Virginia Division of Highways, certain revisions to the present organizational structure are necessary and prudent;

NOW, THEREFORE, BE IT ORDERED that the Commissioner's Order, dated October 13, 2020 implementing the Organization Chart of the same date, pertaining to the organizational structure of the Division of Highways, be amended; and

BE IT FURTHER ORDERED that the attached West Virginia Division of Highways Organization Chart, dated February 1, 2021 supersedes all previous organization charts and is hereby established and will take effect February 1, 2021.

THE WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS
CHARLESTON, WEST VIRGINIA

ABSTRACT FROM THE RECORDS OF THE
COMMISSIONER'S ORDERS
PAGE TWO

All provisions of this ORDER will become effective upon entry.

Entered this 1st day of February 2021

Byrd E. White, III
Secretary of Transportation/
Commissioner of Highways

Attachment

Distribution:

Administrative Staff
Division Directors
District Engineers/Managers
Office of the Governor
Department of Administration
West Virginia State Auditor
Secretary of State
Federal Highway Administration

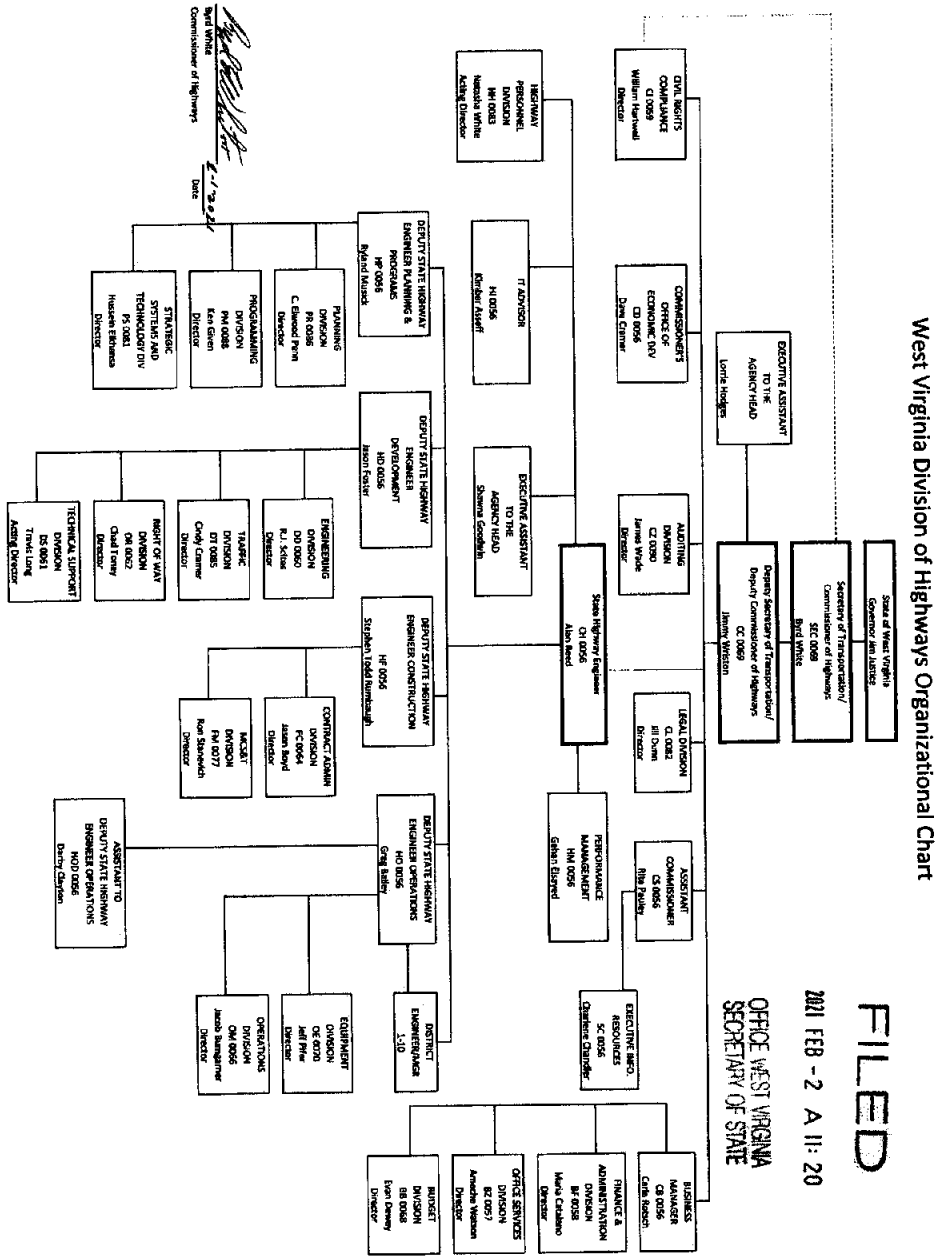
STATE OF WEST VIRGINIA
WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS

Given under my hand and seal of the West Virginia Division of Highways, I do hereby certify that the foregoing is a true abstract from the Orders of the West Virginia Commissioner of Highways, entered of record this 1st day of February 2021.

Division of Highways

OTHER

West Virginia Division of Highways Organizational Chart



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2021 FEB -2 A 11:20
OFFICE WEST VIRGINIA SECRETARY OF STATE

THE WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
CHARLESTON, WEST VIRGINIA

FILED

2021 FEB -2 A 11: 21

OFFICE WEST VIRGINIA
SECRETARY OF STATE

OTHER

ABSTRACT FROM THE RECORDS OF THE
SECRETARY'S ORDERS

DATED

February 1, 2021

WHEREAS, Chapter 5F, Article 2, Section 2, of the Official Code of West Virginia, 1931, as amended, authorizes the Secretary of the Department of Transportation to employ persons, consolidate positions, assign duties and name persons to fill more than one position; and

WHEREAS, the aforementioned Section of the Code further authorizes the Secretary to reorganize internal functions or operations; and

WHEREAS, the aforementioned Section of the Code further authorizes the Secretary to delegate duties to or among employees; and

WHEREAS, the aforementioned Section requires the efficient, effective and economical operation of the Department of Transportation; and

WHEREAS, to promote maximum efficient and effectiveness in carrying out the duties and responsibilities for the full range of transportation services desired by the citizens of West Virginia, and her visitors, by the Department of Transportation, it is necessary and proper to organize the Office of the Secretary of the Department of Transportation and the Division of Highways in the most effective means possible;

NOW, THEREFORE, BE IT RESOLVED that all previous Secretary's Orders, Commissioner's Orders and Organization Charts pertaining to the organization structure of the Office of the Secretary and the Division of Highways be amended; and

BE IT FURTHER ORDERED that the organizational structure and personnel assignments and duties shown on the attached Department of Transportation Organization Chart dated February 1, 2021, are hereby established and will take effect immediately.

THE WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
CHARLESTON, WEST VIRGINIA

ABSTRACT FROM THE RECORDS OF THE
SECRETARY'S ORDERS

All provisions of this ORDER will become effective upon entry.

Entered this 1st day of February 2021.

Byrd E. White, III
Secretary of Transportation

Attachment

Distribution

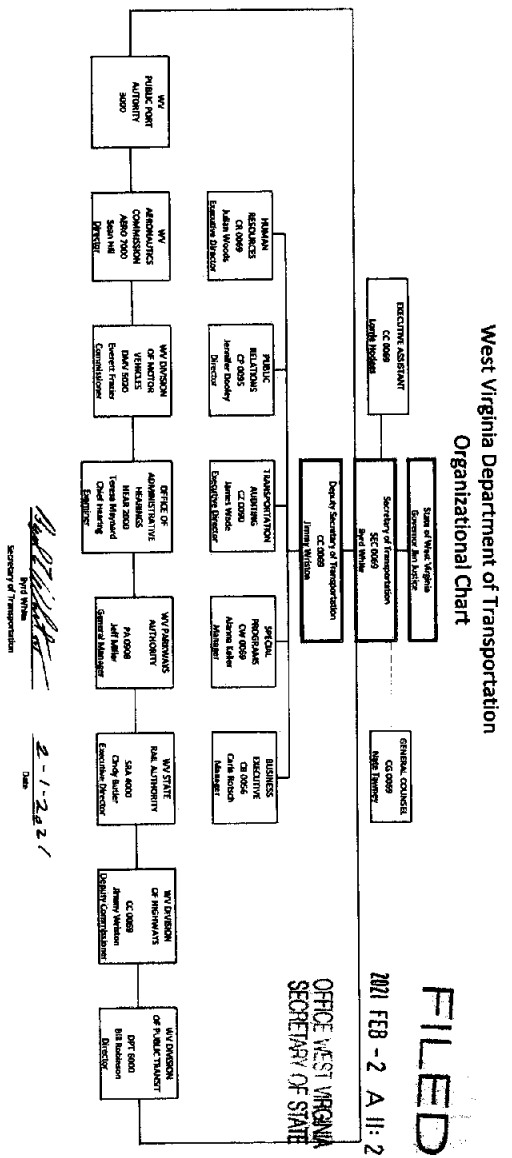
Administrative Staff
Division of Motor Vehicles
Aeronautics Commission
State Rail Authority
Division of Public Transit
WV Parkways Authority
Office of Administrative Hearings
Office of the Governor
Department of Administration
West Virginia State Auditor
Secretary of State
Federal Highway Administration

STATE OF WEST VIRGINIA
WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Given under my hand and seal of the Department of Transportation, I do hereby certify that the foregoing is a true abstract from the Orders of the West Virginia Secretary of Transportation, entered of record this 1st day of February 2021.

Department of Transportation

OTHER



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2021 FEB -2 A 11: 21
OFFICE WEST VIRGINIA
SECRETARY OF STATE

2-1-2021
Date

Dave Hardy
Secretary of Revenue

Matthew Irby
Acting Tax Commissioner

STATE TAX DEPARTMENT

FILED
2021 FEB -2 P 4: 59
OFFICE WEST VIRGINIA
SECRETARY OF STATE

ADMINISTRATIVE NOTICE 2021-01

PROPERTY TAX
STATE TAX COMMISSIONER'S STATEMENT
FOR THE DETERMINATION OF ROYALTY RATES FOR PRODUCING COAL AND OTHER NATURAL RESOURCES FOR AD VALOREM PROPERTY TAX PURPOSES FOR TAX YEAR 2021, PURSUANT TO §§110 CSR 1I-4.1.6 AND 1K-4.1.6

On August 31, 2020, the State Tax Department filed valuation variables to be used in conjunction with legislative regulations for the appraisal of natural resource properties. (See: §§ 110 CSR 1-H, 1-I, 1-J and 1-K). This notice will address one of the variables, royalty rate(s), setting forth the procedures used in developing the rate(s) for producing coal and other natural resources exclusive of oil and natural gas for Tax Year 2021.

DISCUSSION

In West Virginia, natural resources royalty rates are generally negotiated at a stated price per ton or as a percent of the selling price per ton of the resource produced. As most leases are negotiated as a percentage of selling price, it is necessary to obtain lease and sales information and to analyze this information in order to develop leasing and sales price patterns typical of the industry.

The Department's review of coal industry leasing patterns during the previous eight (8) years reveals that leases for surface mining operations (6.54%) are typically higher than for deep mining operations (5.72%). Review of sales prices reported in *Coal Week*, the Tax Year 2021 returns and other sources, further reveal a difference in typical selling prices of steam coal ($52.10 per ton) and metallurgical coal ($112.88 per ton).

Thus, royalty rates typically negotiated by the coal industry have been as follows:

Steam Coal/Deep Mine	$ 52.10 per ton	X	5.72%	= $2.98 per ton
Metallurgical Coal/Deep Mine	$ 112.88 per ton	X	5.72%	= $6.45 per ton
Steam Coal/Surface Mine	$ 52.10 per ton	X	6.54%	= $3.41 per ton
Metallurgical Coal/ Surface Mine	$ 112.88 per ton	X	6.54%	= $7.39 per ton

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Telephone 304-558-0751
Fax 304-558-8999

Similar research of royalty rates for other natural resources revealed the following:

Limestone/Deep	22¢ per ton
Limestone/Surface	22¢ per ton
Sandstone	30¢ per ton
Clay/Shale	11¢ per ton
Sand/Gravel	40¢ per ton
Salt	10¢ per ton

For more information concerning natural resource properties' royalty rate(s), contact the State Tax Department at (304) 558-3940.

Notice of this determination will be filed in the West Virginia Register.

Issued: February 2, 2021

Matthew Irby
Acting Tax Commissioner

State Tax Department
Property Tax Division
P. O. Box 2389
Charleston, WV 25328-2389

Operator on Duty 8:30 am - 5:00 pm
Monday through Friday
Phone: (304) 558-3940
FAX: (304) 558-1843

OTHER

Dave Hardy
Secretary of Revenue

STATE TAX DEPARTMENT

Dale W. Steager
State Tax Commissioner

FILED
2021 JAN 29 P 1:18
OFFICE WEST VIRGINIA SECRETARY OF STATE

ADMINISTRATIVE NOTICE 2021-02

PROPERTY TAX
STATE TAX COMMISSIONER'S STATEMENT CONCERNING PRIMARY RELIANCE ON THE INCOME APPROACH TO VALUE FOR APPRAISALS OF PRODUCING AND RESERVE COAL, PRODUCING OIL AND GAS, AND PRODUCING OTHER MINED MINERALS PURSUANT TO §§ 110 CSR 1I-4, 1J-4 AND 1K-4

The Legislative Rule §§ 110 CSR 1J-1, *et seq.* concerning the appraisal of producing and reserve oil and gas properties became effective June 1, 2005, §§ 110 CSR 1I-1, *et seq.* for the appraisal of producing and reserve coal properties became effective May 1, 2006 and §§ 110 CSR 1K-1, *et seq.* for the appraisal of producing other mined mineral properties became effective May 1999. This notice will address these rules' primary reliance on the income approach to value when appraising active and reserve coal, producing oil and gas, and other mined mineral properties for property tax purposes.

DISCUSSION

There are three (3) generally accepted approaches to value that must be considered when estimating market value of property for ad valorem tax purposes. These are the cost, market, and income approaches. These approaches to value must be considered and should be developed, if appropriate, to properly estimate market value in compliance with generally accepted appraisal principles. The following is a brief discussion of these three (3) approaches to value and their potential use when estimating the market value of producing natural resource properties for ad valorem tax purposes.

COST APPROACH

The cost approach to value is based upon the assumption that the cost of a property, less depreciation (loss in value), yields a reasonable estimate of market value. There are three (3) generally accepted types of cost approach appraisal methods; these are: original cost less depreciation, reproduction cost less depreciation, and replacement cost less depreciation. Depreciation is a loss in value due to physical deterioration through use, functional obsolescence through design or utility and economic obsolescence due to outside market forces.

Original cost less depreciation is the cost of acquisition of a property less a loss in value due to physical deterioration, functional obsolescence and economic obsolescence. This approach is widely employed in the appraisal of "cost-based" regulated utilities, however it has a limited application when appraising producing natural resource properties, as many of these types of properties were acquired years ago at substantially less than current market value.

Reproduction cost less depreciation is the cost of reproducing an exact replica of a property less physical deterioration, functional obsolescence, and economic obsolescence. This approach is employed in appraising one-of-a-kind properties such as works of art or special purpose properties, an example of which is the State's Capitol Building. Coal, oil and gas, and other mined minerals are a nonrenewable natural resource and therefore cannot be reproduced. Because of their nonrenewable nature, producing natural resource properties do not lend themselves to development of a reproduction cost less depreciation appraisal.

Replacement cost less depreciation is the cost of replacing a property with one of like utility less physical deterioration and economic obsolescence. This approach is the most widely used of the three (3) cost approaches to value and is widely employed in the appraising of commercial and industrial personal property. Replacement cost has limited application, however, in the appraisal of nonrenewable natural resource properties, as the resource cannot, by its nature, be replaced.

MARKET APPROACH

The market approach to value is based upon the assumption that the recent selling price of comparable properties if properly analyzed and adjusted, if appropriate, will yield a reasonable estimate of current market value. This valuation approach is widely employed in the valuation of residential real estate where a considerable number of properties transfer on a reasonably frequent basis. Natural resource properties sell infrequently and when they do sell they are quite often only a portion of the property acquisition thus diluting the purity of the market transaction. Therefore, the market approach to value has limited application because of the lack of a sufficient number of sales of natural resource properties to statistically support development of the approach for natural resource properties.

INCOME APPROACH

The income approach to value is based upon the assumption that a property is worth the future income, discounted to present worth, that it will generate for a perspective buyer. The income approach is widely used in the appraisal of various types of income producing properties and is appropriately used in several taxing jurisdictions to value producing natural resource properties, i.e. natural resource properties that produce an income stream. In addition, the income approach can be developed for non-producing properties through use of estimating the unit income value and apportioning the value to non-producing properties based upon their probable time of mining.

OTHER

APPLICATION

From the above discussion it becomes readily apparent that development of a cost or a market approach valuation for producing and reserve coal and producing oil and gas and other minerals properties is inappropriate. The Tax Department therefore developed and relied upon an income approach appraisal; as the income approach is the only one (1) of the three (3) generally accepted approaches to value that can properly be developed to yield reasonable estimates of current market value when used in a mass appraisal environment.

For further information concerning the use of the income approach to value natural resource properties see §§ 110 CSR 1I-1, 1J-1 and 1K-1 et seq. or contact the State Tax Department at (304) 558-3940.

Notice of this determination will be filed in the West Virginia Register.

Issued: January 29, 2021

Dale W. Steager
State Tax Commissioner

State Tax Department
Property Tax Division
P. O. Box 2389
Charleston, WV 25328-2389

Operator on Duty 8:30 am - 5:00 pm
Monday through Friday
Phone: (304) 558-3940
FAX: (304) 558-1843

Dave Hardy
Secretary of Revenue

Matthew Irby
Acting Tax Commissioner

STATE TAX DEPARTMENT

OTHER

FILED
2021 FEB -2 P 4: 56
OFFICE WEST VIRGINIA SECRETARY OF STATE

ADMINISTRATIVE NOTICE 2021-03

PROPERTY TAX
STATE TAX COMMISSIONER'S STATEMENT
FOR THE DETERMINATION OF THE IN-PLACE TONNAGE PER ACRE-FOOT OF COAL AND OTHER NATURAL RESOURCES

The Legislative Rules filed by the State Tax Department became effective on May 1, 1999 (see §§ 1K-1, *et seq.*) and May 1, 2006, (see §§ 110 CSR 1I-1, *et seq.*) for the appraisal of coal properties and other natural resource properties. This notice will address these Rules' use of the in-place tonnage per acre-foot for coal properties, referenced in § 110 CSR 1I-3.59 and for other natural resource properties, referenced in § 110 CSR 1K-3.27.

DISCUSSION

The specific gravity[1] of bituminous coal ranges between 1.15 and 1.5 depending on rank, moisture content, and ash content, and averages 1.32. The Legislative Rule's equation for the determination of tons per acre-foot is as follows:

$$\frac{62.4 \text{ lbs. per ft3 water} \times 43{,}560 \text{ ft3 per acre-ft.} \times \text{natural resource specific gravity}}{2000 \text{ lbs./ton}} = \text{tons per acre-ft.}$$

Substituting the specific gravity of coal into the formula we find that there are approximately 1800 tons of coal in place per acre-foot as follows:

$$\frac{62.4 \times 43{,}560 \times 1.32}{2000} = 1{,}793.97 \text{ or } 1800 \text{ tons per acre-ft.}$$

[1]specific gravity - The ratio of the weight of an object in air to the weight of an equal volume of water

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It should be noted here that the 1800 tons per acre-foot establishes a benchmark for determination of a recovery rate. If the specific gravity of coal being mined is less than or greater than 1.32 then the recovery rate per acre mined should be adjusted accordingly, thus eliminating the potential of inaccurate calculations of acres mined.

Similar calculations for other mined minerals yield the following results:

Limestone	=	3,600 acre-ft.
Sandstone	=	3,400 acre-ft.
Clay/Shale	=	3,250 acre-ft.
Sand/Gravel	=	2,400 acre-ft.
Salt	=	2,950 acre-ft.

For more information concerning the development of the in-place tonnage of natural resource properties see §§ 110 CSR 1I-1 and 1K-1 et seq. or contact the State Tax Department at (304) 558-3940.

Notice of this determination will be filed in the West Virginia Register.

Issued: February 2, 2021

Matthew Irby
Acting Tax Commissioner

State Tax Department
Property Tax Division
P. O. Box 2389
Charleston, WV 25328-2389

Operator on Duty 8:30 am - 5:00 pm
Monday through Friday
Phone: (304) 558-3940
FAX: (304) 558-1843

Dave Hardy
Secretary of Revenue

Matthew Irby
Acting Tax Commissioner

STATE TAX DEPARTMENT

OTHER

FILED
2021 FEB -2 P 5:00
OFFICE WEST VIRGINIA
SECRETARY OF STATE

ADMINISTRATIVE NOTICE 2021-04

PROPERTY TAX
STATE TAX COMMISSIONER'S STATEMENT
CONCERNING PRIMARY RELIANCE ON THE MARKET
COMPARABLE APPROACH FOR APPRAISING RESERVE
OTHER NATURAL RESOURCES PURSUANT TO § 110 CSR 1K-4.2

On May 1, 1999, the Legislative Rule filed by the State Tax Department for the appraisal of natural resources other than coal, oil and natural gas (see §§ 110 CSR 1K-1, *et seq.*) became effective. This notice will address this Rule's primary reliance on the market comparable approach to value when appraising reserve other natural resource properties for ad valorem property tax purposes.

DISCUSSION

There are three (3) generally accepted approaches to value that must be considered when estimating market value of properties for ad valorem tax purposes. These are the cost, market, and income approaches to value. These approaches to value must be considered and should be developed, if appropriate, to properly estimate market value in compliance with generally accepted appraisal principles. The following is a brief discussion of these three (3) approaches to value and their potential use when estimating the market value of reserve natural resource properties other than coal and oil and gas for ad valorem tax purposes.

COST APPROACH

The cost approach to value is based upon the assumption that the cost of a property, less depreciation (loss in value), yields a reasonable estimate of market value. There are three (3) generally accepted types of cost approach appraisal methods; these are: original cost less depreciation, reproduction cost less depreciation, and replacement cost less depreciation. Depreciation is a loss in value due to physical deterioration through use, functional obsolescence through design or utility and economic obsolescence due to outside market forces.

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Telephone 304-558-0751
Fax 304-558-8999

Original cost less depreciation is the cost of acquisition of a property less a loss in value due to physical deterioration, functional obsolescence and economic obsolescence. This approach is widely employed in the appraisal of "cost-based" regulated utilities, however it has a limited application when appraising reserve natural resource properties, as many of these types of properties were acquired years ago at substantially less than current market value.

Reproduction cost less depreciation is the cost of reproducing an exact replica of a property less physical deterioration, functional obsolescence, and economic obsolescence. This approach is employed in appraising one-of-a-kind properties such as works of art or special purpose properties, an example of which is the State's Capitol Building. Other mineral properties are a nonrenewable natural resource and therefore cannot be reproduced. Because of their nonrenewable nature, reserve natural resource properties do not lend themselves to development of a reproduction cost less depreciation appraisal.

Replacement cost less depreciation is the cost of replacing a property with one of like utility less physical deterioration and economic obsolescence. This approach is the most widely used of the three (3) cost approaches to value and is widely employed in the appraisal of commercial and industrial personal property. Replacement cost has limited application, however, in the appraisal of nonrenewable natural resource properties, as the resource cannot, by its nature, be replaced. Because of their nonrenewable nature, reserve natural resource properties do not lend themselves to the development of replacement cost new less depreciation appraisals.

INCOME APPROACH

The income approach to value is based upon the assumption that a property is worth the future income, discounted to present worth, that it will generate for a prospective buyer. The income approach is widely used in the valuation of various types of income producing properties; however, the approach has limited application in valuing properties that do not produce an income stream. Reserve other natural resource properties do not readily produce an income stream and do not therefore readily lend themselves to application of an income approach valuation.

MARKET APPROACH

The market approach to value is based upon the assumption that the recent selling price of comparable properties, if properly analyzed and adjusted, will yield a reasonable estimate of current market value. Consistent with the above referenced Legislative Rule, the State Tax Department developed a market comparable approach for reserve other mineral properties. The Department has reviewed sales during at least the five (5) calendar years prior to the July 1st appraisal date of 2020 in various fashions and has constructed measures of central tendency concerning sales transacted during the aforementioned period of time. These sales have been analyzed according to methods established in § 110 CSR 1K-4.2 for reserve other natural resource properties. The Department published and filed final variables on August 31, 2020.

OTHER

Reserve rates for the various other mined minerals are as follows:

Limestone	$3,000/acre
Sandstone	$2,300/acre
Clay/Shale	$ 850/acre
Sand/Gravel	$4,000/acre
Salt	$1,140/acre

For more information concerning the appraisal of reserve other mineral properties consult § 110 CSR 1K-1 or contact the State Tax Department at telephone number (304) 558-3940.

Notice of this determination will be filed in the West Virginia Register.

Issued: February 2, 2021

Matthew Irby
Acting Tax Commissioner

State Tax Department
Property Tax Division
P. O. Box 2389
Charleston, WV 25328-2389

Operator on Duty 8:30 am - 5:00 pm
Monday through Friday
Phone: (304) 558-3940
FAX: (304) 558-1843

Dave Hardy
Secretary of Revenue

STATE TAX DEPARTMENT

Matthew Irby
Acting Tax Commissioner

FILED
2021 FEB -2 P 5:00
OFFICE WEST VIRGINIA SECRETARY OF STATE

ADMINISTRATIVE NOTICE 2021-05

PROPERTY TAX
STATE TAX COMMISSIONER'S STATEMENT
FOR VALUE ANALYSIS OF RESERVE COAL PROPERTIES
PURSUANT TO § 110 CSR 1I-4.2

On May 1, 2006, the Legislative Rule filed by the State Tax Department relating to the appraisal of producing and reserve coal properties (see §§ 110 CSR 1I-1, *et seq.*) became effective. This notice will address valuation of reserve coal properties conducted by the State Tax Department pursuant to § 110 CSR 1I-4.2.

DISCUSSION

Legislative Rule § 110 CSR 1I-4.2 requires reserve coal properties to be appraised based upon coal bed mapping information from which a reserve coal valuation model (RCVM) is derived.

RESERVE COAL VALUATION MODEL (RCVM)

Legislative Rule § 110 CSR 1I-4.2.3 requires the establishment of a reserve coal valuation model (RCVM) by the systematic analysis of Geographic Information System (GIS) data sets relating to the following: coal bed maps, mine maps, pricing and market analysis (including royalties), property transactions, environmental factors, property location, use conflicts and coal bed characteristics, including quality considerations. This analysis is designed to produce a valuation of individual coal beds per individual coal reserve properties.

Data sets for this analysis will be derived from a variety of sources, including but not limited to, the following: taxpayer annual returns, questionnaires, West Virginia Geological and Economic Survey, West Virginia Department of Environmental Protection, West Virginia Division of Natural Resources, United States Department of Interior (United States Geological Survey)*, and any other reliable source(s) which may come to the attention of the Commissioner.

* See USGS Circular 891.

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Fax 304-558-8999

For more information concerning the calculations for developing the RCVM consult §§ 110 CSR 1I-1, *et seq.* or contact the State Tax Department at telephone number (304) 558-3940.

Notice of this determination will be filed in the West Virginia Register.

Issued: February 2, 2021

Matthew Irby
Acting Tax Commissioner

State Tax Department
Property Tax Division
P. O. Box 2389
Charleston, WV 25328-2389

Operator on Duty 8:30 am - 5:00 pm
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Phone: (304) 558-3940
FAX: (304) 558-1843

OTHER

Dave Hardy
Secretary of Revenue

STATE TAX DEPARTMENT

Dale W. Steager
State Tax Commissioner

FILED
2021 JAN 29 P 1:18
OFFICE WEST VIRGINIA
SECRETARY OF STATE

ADMINISTRATIVE NOTICE 2021-06

PROPERTY TAX
STATE TAX COMMISSIONER'S STATEMENT
FOR THE DETERMINATION OF THE CAPITALIZATION RATES FOR PRODUCING AND RESERVE COAL, OIL AND GAS AND OTHER MINED MINERALS FOR PROPERTY TAX PURPOSES FOR TAX YEAR 2021
PURSUANT TO §§ 110 CSR 1I-4.1.7, 1J-4.5 AND 1K-4.1.7

On August 31, 2020, the State Tax Department filed valuation variables to be used in conjunction with legislative rules for the appraisal of producing natural resource properties. (See: §§ 110 CSR 1-I, 1-J and 1-K). This notice will address one of the variables, the capitalization rate, setting forth the generally accepted appraisal procedures used in developing the respective rates and in applying the rates to income streams generated by natural resource properties. To this end, this notice will discuss development of industry capitalization rates for properties containing coal, and/or oil and gas, and/or other mined minerals.

DISCUSSION

The International Association of Assessing Officers text, *Property Appraisal and Assessment Administration*, 1990, defines a capitalization rate as: "Any rate used to convert an estimate of income to an estimate of market value; the ratio of net operating income to market value." In other words, a rate used to convert an estimate of future income into an estimate of present value.

Generally, there are three (3) components that must be considered and if appropriate developed and included in an overall capitalization rate. These components are the discount component, the recapture component, and the property tax component. The development of each of these three (3) components will be discussed in the remainder of this Notice.

DISCOUNT COMPONENT

Of the three (3) generally accepted methods of estimating a discount component, the bands-of-investment method and the summation method have received primary consideration. Consideration was given to use of the comparison method; however, the Tax Department is of the opinion that the bands-of-investment and summation methods are the more appropriate methods to employ for properties containing coal, and/or oil and gas, and/or other mined minerals as there are a limited number of sales of these types of properties and these methods lend themselves more readily to the conversion of the equity rate portion of the discount component to a pre-tax rate.

The first step in the process is to construct a capital structure. The capital structure of an industry depicts typically the sources of capital financing (i.e.: what portion of the total capital financing is raised through debt and through equity financing). The Tax Department developed an average industry capital structure based on mining and oil and gas industries as grouped in the Value Line Investment Survey. The capital structure was segregated into percentages of capital financing generated through debt and through equity financing in order to develop a profile for typical leveraging characteristics by type industry. (Equity financing represents capital acquired through sale of stock and earnings retention and debt financing represents capital acquired through issuance of instruments of debt.)

Once the capital structure had been established a return on investment is developed for each financing band. The Tax Department analyzed the financial information of companies grouped by industry in the Value Line Investment Survey in order to develop a return by type industry for common stocks. This "after-tax" return was then adjusted to a "pre-tax" return where applicable and used in developing the equity portion of the discount component.

The debt return for the debt finance band was established, by adding two percent (2%) to the Prime Rate Charged by Banks as published in the Economic Indicators Prepared by the Council of Economic Advisors for the Joint Economic Committee. Once a safe rate and a risk rate are developed from the previously mentioned analysis, a management rate (for management of investment portfolios), a non-liquidity rate (time required to sell the investment), and an inflation rate (rate used to adjust the discount component to a real rate net of inflationary expectations) are estimated.

RECAPTURE COMPONENT

The discount component previously discussed provides an investor with a rate of return-on-investment (interest). The second capitalization rate component, recapture, provides the investor with a return-of-investment principal (i.e.: provides an estimate of return necessary for the investor to recover the principal invested). Once a capitalization rate has been developed for coal, oil and gas, and other mined mineral properties, the income series is discounted to present worth through selection of a multiplier(s) extracted from a standard mid-year life Inwood table. The Inwood table has a factor for recapture built into the table coefficients thus removing the need to separately accommodate for recapture in the capitalization rate.

OTHER

PROPERTY TAX COMPONENT

The third component, property taxes, was derived by multiplying the assessment rate by the statewide average of tax rates on Class III property. Tax Department research indicates that in addition to royalty rates negotiated in producing coal property leases, property taxes are customarily paid by the coal producer. Thus, the capitalization rate for producing coal properties does not contain a property tax component as the income stream does not contain income to be used to pay property taxes.

APPLICATION

The summation of the previously discussed components (i.e.: discount, recapture, and property tax components) yields a reasonable estimate for the overall capitalization rate. The overall capitalization rate is used to select the factor(s) from a standard mid-year life Inwood table (i.e.: present worth of one (1) per period) that converts the income stream(s) into an estimate of present worth.

For more information concerning the development of capitalization rates for producing natural resource properties see §§ 110 CSR 1-I, 1-J and 1-K, or contact the State Tax Department at (304) 558-3940.

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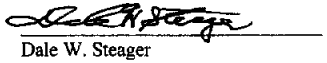

Dale W. Steager
State Tax Commissioner

State Tax Department
Property Tax Division
P. O. Box 2389
Charleston, WV 25328-2389

Operator on Duty 8:30 am - 5:00 pm
Monday through Friday
Phone: (304) 558-3940
FAX: (304) 558-1843

Dave Hardy
Secretary of Revenue

Dale W. Steager
State Tax Commissioner

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ADMINISTRATIVE NOTICE 2021-07

PROPERTY TAX
STATE TAX COMMISSIONER'S STATEMENT
FOR THE DETERMINATION OF PRODUCTION DECLINE RATES FOR PRODUCING OIL AND GAS PROPERTIES FOR PROPERTY TAX PURPOSES FOR TAX YEAR 2021, PURSUANT TO § 110 CSR 1J-4.4

On August 31,2020, the State Tax Department filed valuation variables to be used in conjunction with the legislative rule for the appraisal of oil and gas properties. (See: §§ 110 CSR 1J-1, *et seq.*) This notice will address one of the variables, the production decline rate(s), setting forth the procedures used in developing the rate(s) for Tax Year 2021.

DISCUSSION

The income stream generated from a producing oil or gas well is directly dependent upon the quantity of the natural resource produced from the well. Once drilled an oil or gas well will experience a sharper production decline, typically for the first two (2) years of production. This is known as flush production. Thereafter production decline levels off into what is known as settled production. The rate of production decline is dependent upon the physical location of the well and the stratigraphic formation(s) from which the well is producing.

The West Virginia Geological and Economic Survey ("Survey") has in past years created a database that contains well-by-well production data by producing formation(s). The Tax Department contracted with the Survey to develop an analytical model to plot production declines by location/formation throughout the State using data available at the time of the contract.

The Survey has divided the State into ten (10) regions that contain similar oil and gas geological characteristics. A map of the State depicting each of the ten (10) regions and a complete list of the oil and gas decline rates can be found in the above referenced variables filed on August 31, 2020.

For Tax Year 2014, in addition to the data from the Survey, the Tax Department also did a survey for Marcellus wells. The results from this data were used in the above-referenced variables as well.

For Tax Year 2016, further data was also utilized to update the Marcellus decline for the North West Region.

The appropriate production decline rate(s) are applied to individual well gross receipts to develop a probable future income series for the respective wells. The income streams from these wells are then discounted to present value.

For more information concerning the development of oil and gas well production decline rates contact the State Tax Department at (304) 558-3940.

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Dale W. Steager
State Tax Commissioner

State Tax Department
Property Tax Division
P. O. Box 2389
Charleston, WV 25328-2389

Operator on Duty 8:00 am - 5:00 pm
Monday through Friday
Phone: (304) 558-3940
FAX: (304) 558-1843

Dave Hardy
Secretary of Revenue

STATE TAX DEPARTMENT

Dale W. Steager
State Tax Commissioner

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ADMINISTRATIVE NOTICE 2021-08

PROPERTY TAX
STATE TAX COMMISSIONER'S STATEMENT
FOR THE DETERMINATION OF OIL AND GAS OPERATING EXPENSES FOR PROPERTY TAX PURPOSES FOR TAX YEAR 2021, PURSUANT TO § 110 CSR 1J-4.3

The Legislative Rule for the appraisal of oil and gas properties (See §§ 110 CSR 1J-1, *et seq.*) became effective June 1, 2005. This notice will address one of the valuation variables referenced in the Rule, oil and gas operating expenses, setting forth procedures used in developing these expenses and their application against receipts for the working interest of oil and gas producing properties.

DISCUSSION

In 2019 the Tax Department reviewed data supplied in various court cases. This information involved the average annual operating expenses for many West Virginia wells under present economic conditions. The Tax Department has developed the following criteria for the direct ordinary operating expenses as a result of this review. Direct ordinary operating expenses will be estimated to be $5,000 for a conventional gas producing well, $5,750 for an oil producing well and $9,000 for a vertical coalbed methane gas producing well or enhanced recovery oil well producing well. In instances where the well is producing both oil and gas, $5,750 will be distributed depending on the percentage of gas versus oil receipts involved for conventional wells and $9,000 will be distributed for vertical coal methane and enhanced recovery oil depending on the percentage of gas versus oil receipts. For Marcellus/Utica vertical wells, the operating expense allowed is $15, 000 for a gas producing well. For Marcellus/Utica horizontal wells, the operating expense allowed is $125,000 for a gas producing well. For horizontal other than Marcellus/Utica/Coalbed methane, the operating expense allowed is $20,000 for a gas producing well.

For Marcellus/Utica vertical wells in which the well is producing both oil and gas production, the $15,000 will be distributed depending on the percentage of gas versus oil receipts involved well. For Marcellus horizontal wells the allowable operating expense is $5,750 for the oil and $125,000 for the gas. For horizontal, other than Marcellus/Utica/Coalbed Methane, the $20,000 will be distributed depending upon the percentage of gas versus oil receipts involved. As required in the amended Rule, the Tax Department will review such rates every five years.

Property Tax Division, 1124 Smith Street, P.O. Box 2389, Charleston, WV 25328-2389
Telephone 304-558-3940
Fax 304-558-1843

For additional information concerning oil and gas annual operating expenses see § 110 CSR 1J-1 et seq. or call the State Tax Department at (304) 558-3940.

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Dale W. Steager
State Tax Commissioner

State Tax Department
Property Tax Division
P. O. Box 2389
Charleston, WV 25328-2389

Operator on Duty 8:00 am - 5:00 pm
Monday through Friday
Phone: (304) 558-3940
FAX: (304) 558-1843

Dave Hardy
Secretary of Revenue

Dale W. Steager
State Tax Commissioner

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ADMINISTRATIVE NOTICE 2021-09

PROPERTY TAX
STATE TAX COMMISSIONER'S STATEMENT
FOR THE DETERMINATION OF THE SOIL PRODUCTIVITY
MAPS FOR MANAGED TIMBERLAND, PURSUANT TO § 110 CSR 1H-3.16

On May 1, 1999, the Legislative Rule for the valuation of timberland and managed timberland (See §§ 110 CSR 1H-1, *et seq.*) became effective. This rule addresses, in section three (3.16), managed timberland soil productivity maps. This notice will discuss development of these maps and reference source materials used in their compilation.

DISCUSSION

The Legislative Rule requires the use of the United States Department of Agriculture Natural Resource Conservation Service (NRCS) Soil Survey Geographic Database (SSURGO) data or the best information available if these data are not available. For the 2021 Tax Year, the Department has used the below referenced soil survey data.

The Department entered into contracts with the West Virginia University College of Agriculture and Forestry and with Dr. David E. White, Professor of Forest Economics and Policy, to develop soil productivity maps reflecting productivity grades. Soil productivity maps were developed and delivered to the Department in 1985. These maps were used (with the exception of Webster County) as a basis for grading and pricing approved managed timberland applications. A composite of surrounding county soil productivity types was used for the portions of Webster County where no soil data was available. The Department also contracted with Charles Yuill of West Virginia University to determine soil productivity through a GIS mapping technique.

For more information concerning the soil productivity maps see §§ 110 CSR 1H-1, *et seq.* or contact the State Tax Department at (304) 558-3940.

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Dale W. Steager
State Tax Commissioner

State Tax Department
Property Tax Division
P. O. Box 2389
Charleston, WV 25328-2389

Operator on Duty 8:30 am - 5:00 pm
Monday through Friday
Phone: (304) 558-3940
FAX: (304) 558-1843

Dave Hardy
Secretary of Revenue

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State Tax Commissioner

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ADMINISTRATIVE NOTICE 2021-10

PROPERTY TAX
STATE TAX COMMISSIONER'S STATEMENT
CONCERNING PRIMARY RELIANCE ON THE INCOME APPROACH FOR APPRAISING RESERVE OIL AND GAS PROPERTY PURSUANT TO § 110 CSR 1J-4

On June 1, 2005, the State Legislature amended Legislative Rule §§ 110 CSR 1J-1, *et seq.* (for the appraisal of producing and reserve oil and gas properties) became effective. This notice will address this rule's primary reliance on the income approach to value when appraising reserve oil and gas properties for property tax purposes.

DISCUSSION

There are three (3) generally accepted approaches to value that must be considered when estimating market value of properties for ad valorem tax purposes. These are the cost, market and income approaches to value. These approaches to value must be considered and should be developed, if appropriate, to properly estimate market value in compliance with generally accepted appraisal principals. The following is a brief discussion of these three (3) approaches to value and their potential use when estimating the market value of reserve oil and gas natural resource properties for ad valorem tax purposes.

COST APPROACH

The cost approach to value is based upon the assumption that the cost of a property, less depreciation (loss in value), yields a reasonable estimate of market value. There are three (3) generally accepted types of cost approach appraisal methods; these are: original cost less depreciation, reproduction cost less depreciation, and replacement cost less depreciation. Depreciation is a loss in value due to physical deterioration through use, functional obsolescence through design or utility and economic obsolescence due to outside market forces.

Original cost less depreciation is the cost of acquisition of a property less a loss in value due to physical deterioration, functional obsolescence and economic obsolescence. This approach is widely employed in the appraisal of "cost-based" regulated utilities, however it has a limited

Property Tax Division, 1124 Smith Street, P.O. Box 2389, Charleston, WV 25328-2389
Telephone 304-558-3940
Fax 304-558-1843

application when appraising reserve oil and gas properties, as many of these types of properties were acquired years ago at substantially less than current market value.

Reproduction cost less depreciation is the cost of reproducing an exact replica of a property less physical deterioration, functional obsolescence, and economic obsolescence. This approach is employed in appraising one-of-a-kind properties such as works of art or special purpose properties, an example of which may be the State's Capitol Building. Oil and gas properties are a nonrenewable natural resource and can therefore not be reproduced. Because of their nonrenewable nature, reserve oil and gas properties do not lend themselves to development of a reproduction cost less depreciation appraisal.

Replacement cost less depreciation is the cost of replacing a property with one of like utility less physical deterioration and economic obsolescence. This approach is the most widely used of the three (3) cost approaches to value and is widely employed in the appraisal of commercial and industrial personal property. Replacement cost has limited application, however, in the appraisal of nonrenewable natural resource properties, as the resource cannot by its nature be replaced. Because of their nonrenewable nature, reserve oil and gas properties do not lend themselves to the development of replacement cost new less depreciation appraisals.

MARKET APPROACH

The market approach to value is based upon the assumption that the recent selling price of comparable properties, if properly analyzed and adjusted, will yield a reasonable estimate of current market value. While sales of reserve oil and gas properties do occur within the State, the sales are infrequent and quite often oil and gas interests represent only a portion of the property acquisition thus diluting the purity of the market transaction. Because of these drawbacks the Legislative Rule does not contemplate the development of a market comparable approach to value for reserve oil and gas properties.

INCOME APPROACH

The income approach to value is based upon the assumption that a property is worth the future income, discounted to present worth, that it will generate for the prospective buyer. In the oil and gas industry, a common business practice of negotiating advance payments ("delay rentals") for the right to, at some future date, produce oil and gas has developed. By analyzing the amount and duration, typically, of delay rentals and by discounting the resulting income series to present worth an estimate of the probable selling price of reserve oil and gas properties can be developed. This procedure contained in § 110 CSR 1J-4.7 is the method used by the Department to develop, on a county and district basis, the per acre market value of reserve (non-producing acreage) oil and gas properties. The resultant per acre values were developed and published, in finalized form, in the State Register August 31, 2020.

For more information concerning the appraisal of reserve oil and gas properties consult § 110 CSR 1J-1 et seq. or contact the State Tax Department at telephone number (304) 558-3940.

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Dale W. Steager
State Tax Commissioner

State Tax Department
Property Tax Division
P. O. Box 2389
Charleston, WV 25328-2389

Operator on Duty 8:30 am - 5:00 pm
Monday through Friday
Phone: (304) 558-3940
FAX: (304) 558-1843

Dave Hardy
Secretary of Revenue

STATE TAX DEPARTMENT

Dale W. Steager
State Tax Commissioner

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ADMINISTRATIVE NOTICE 2021-11

PROPERTY TAX
STATE TAX COMMISSIONER'S STATEMENT
FOR THE DETERMINATION OF THE CAPITALIZATION
RATES FOR MANAGED TIMBERLAND FOR PROPERTY
TAX PURPOSES FOR TAX YEAR 2021, PURSUANT TO § 110 CSR 1H-12

On May 1, 1999, the Legislative Rule for the appraisal of managed timberland properties (See § 110 CSR 1H) became effective. This notice will address one of the valuation variables, the capitalization rate, setting forth the generally accepted appraisal procedures used in developing the respective rates and in applying the rates to income streams generated by managed timberland properties. To this end, this notice will discuss development of capitalization rates for managed timberland.

DISCUSSION

The International Association of Assessing Officers text *Property Appraisal and Assessment Administration,* 1990, defines a capitalization rate as: "Any rate used to convert an estimate of income to an estimate of market value; the ratio of net operating income to market value." In other words a rate used to convert an estimate of future income into an estimate of present value.

The average statewide capitalization rate (based on a 5-year weighted moving average of various components) for managed timberland is determined annually by the Tax Commissioner through the use of generally accepted methods of determining such rates. The rate is based on the assumption of a discounted cash flow model based upon harvest intervals reflected in Appendix 4 of § 110 CSR 1H.

Generally, there are three (3) components that must be considered and, if appropriate, developed and included in an overall capitalization rate. These components are: the discount component, the recapture component, and the property tax component. The development of the components is discussed in the Rule under Section § 110 CSR 1H-12.1. These are as follows:

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DISCOUNT COMPONENT

The summation technique is used to develop a discount component of the capitalization rate. The five sub-components of the discount component are:

Safe Rate. -- The safe rate reflects a rate of return that an investor could expect on an investment of minimal risk. This rate is developed through weighted averages of interest rates offered on five-year United States Treasury Bills for the five years immediately preceding the appraisal date.

Nonliquidity. – The nonliquidity rate is developed through an annual review to determine a reasonable estimate of time that timberland, when exposed for sale, remains on the market before being sold. The time thus determined is used to identify United States Treasury Bills with similar time differentials in excess of thirteen-week Treasury Bills. The interest differential between these securities is used to represent the nonliquidity rate. For example, if it is determined that a tract of timberland remains on the market for an average of nine months (39 weeks) before being sold, the nonliquidity rate is derived by subtracting the rate on 13-week Treasury Bills from the rate on one-year Treasury Bills. This review considers the weighted average of these differences for a five-year period immediately preceding the appraisal date.

Risk Rate. – The relative degree of risk of an investment in timberland is developed through an annual review of thirty-year United States Treasury Bills less five-year United States Treasury Bills. The review considers the weighted averages of debt and equity components of these differences for a five-year period immediately preceding the appraisal date.

Management Rate. -- The management rate represents the cost of managing the investment, not the cost of managing the timberland. Historically, the management rate has been one-half of one percent (0.5%); therefore, this rate is considered the industry standard for current applications.

Inflation Rate (negative). – Nominal interest rates, including the "safe rate" mentioned above, are higher than real rates by an amount representing expectation of future inflation. Therefore, the capitalization rate must be a real rate, net of expectation of inflation. The inflation rate is established through a weighted average analysis of the most recent five calendar year's urban consumer price index as determined by the United States Department of Labor, Bureau of Labor Statistics.

In determining the discount component of the capitalization rate, the Tax Commissioner determines the sum of the safe rate, the nonliquidity rate, the risk rate, and the management rate, and deducts from this sum the inflation rate.

RECAPTURE COMPONENT

The discount component previously discussed provides an investor with a rate of return-on-investment (interest). The second capitalization rate component, recapture, provides the investor with a return-of-investment principal (i.e.: provides an estimate of return necessary for the investor to recover the principal invested). Once a capitalization rate has been developed, the income series is discounted to present worth through selection of a multiplier(s). The multiplier has a built in factor for recapture thus removing the need to separately accommodate for recapture in the capitalization rate.

PROPERTY TAX COMPONENT

The final component, property taxes, is derived for Class II, Class III, and Class IV properties by multiplying the assessment rate by the statewide average of tax rates on such classes of property.

APPLICATION

The rates as developed above (and shown on attachments) are applied against the difference between future values of the harvest (at determined harvest intervals) less the future value of the management costs less a property tax adjustment for each class of property.

For more information concerning the development of capitalization rates for managed timberland properties see § 110 CSR 1H or contact the State Tax Department at (304) 558-3940.

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Dale W. Steager
State Tax Commissioner

State Tax Department
Property Tax Division
P. O. Box 2389
Charleston, WV 25328-2389

Operator on Duty 8:30 am - 5:00 pm
Monday through Friday
Phone: (304) 558-3940
FAX: (304) 558-1843

Dave Hardy
Secretary of Revenue

Dale W. Steager
State Tax Commissioner

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ADMINISTRATIVE NOTICE 2021-12

PROPERTY TAX
STATE TAX COMMISSIONER'S STATEMENT CONCERNING PRIMARY RELIANCE ON THE COST APPROACH TO VALUE FOR APPRAISALS OF INDUSTRIAL PERSONAL PROPERTY (I.E. MACHINERY, EQUIPMENT, FURNITURE, FIXTURES, AND LEASEHOLD IMPROVEMENTS) PURSUANT TO § 110 CSR 1P-2.5.3.1

On May 21, 2013, the State Tax Department filed Legislative Rule §§ 110 CSR 1P, *et seq.* relating to the appraisal of industrial machinery, equipment, furniture, fixtures, and leasehold improvements. This notice will address the Tax Commissioner's primary reliance on the cost approach to value when appraising industrial machinery, equipment, furniture, fixtures, and leasehold improvements, for property tax purposes.

DISCUSSION

There are three (3) generally accepted approaches to value that must be considered when estimating market value of property for ad valorem tax purposes. These are the cost, market, and income approaches. These approaches to value must be considered and should be developed, if appropriate, to properly estimate market value in compliance with generally accepted appraisal principles. The following is a brief discussion of these three (3) approaches to value and their potential use when estimating the market value of industrial machinery, equipment, furniture, fixtures, and leasehold improvements for ad valorem tax purposes.

MARKET APPROACH

The market approach to value is based upon the assumption that the recent selling price of comparable properties if properly analyzed and adjusted, if appropriate, will yield a reasonable estimate of current market value. This valuation approach is widely employed in the appraisal of residential real estate where a considerable number of properties transfer on a reasonably frequent basis. Industrial machinery, equipment, furniture, fixtures, and leasehold improvements sell infrequently and are often liquidation sales, which typically are not at market value. The market approach to value is of little, if any, use in appraising industrial personal property due principally to the lack of a sufficient number of meaningful sales to statistically support development of the approach.

Property Tax Division, 1124 Smith Street, P.O. Box 2389, Charleston, WV 25328-2389
Telephone 304-558-3940
Fax 304-558-1843

INCOME APPROACH

The income approach to value is based upon the assumption that a property is worth the future income, discounted to present worth that it will generate for a prospective buyer. The income approach is widely used in the appraisal of various types of income producing properties; however, the approach has limited use in the appraisal of industrial machinery, equipment, furniture, fixtures, and leasehold improvements because of the difficulty in estimating future net benefits; except in the case of certain kinds of leased equipment. When reliable data on equipment leases is available, the income approach can provide reliable estimates of fair market value.

COST APPROACH

The cost approach to value is based upon the assumption that the cost of a property, less depreciation (loss in value), yields a reasonable estimate of market value. Depreciation is a loss in value due to physical deterioration through use, functional obsolescence through design or utility and economic obsolescence due to outside market forces.

Costs used in the cost approach can be original, acquisition, replacement, or reproduction costs, although often only original or acquisition costs are readily available. Original cost is the cost of acquisition of a property. Reproduction cost is the cost of reproducing an exact replica of a property. Replacement cost is the cost of replacing a property with one of like utility. The cost approach may be most consistently applied to machinery, equipment, furniture, fixtures, and leasehold improvements because of the availability of reliable data such as the original or acquisition cost.

The State Tax Department trends the original or acquisition cost to today's replacement cost and depreciates the replacement cost, based on age and condition, to estimate a property's current market value. This process is recommended by the International Association of Assessing Officers' Standards on the Valuation of Personal Property.

This process is as follows:

Original or Acquisition Cost	X	Trend Factor	=	Today's Replacement or Reproduction Cost	X	Depreciation Factor	=	Current Market Value

The Tax Commissioner uses the *Marshall Valuation Service*, an appraisal guide, as the source of information for the trend and depreciation tables and provides this information to all fifty-five counties as a guide for the appraisal of personal property. The *Marshall Valuation Service* is compiled, published and updated quarterly by Marshall and Swift of Los Angeles, California. The *Marshall Valuation Service* has a circulation of users in all 50 states, plus the District of Columbia, Puerto Rico, Guam and Canada. Users include independent appraisers, insurance companies, savings and loan associations, banks, architects, developers, accountants, assessors and engineers.

For further discussion concerning the use of a cost approach appraisal, or use of the *Marshall Valuation Service*, please direct your inquiries to the Property Tax Division of the State Tax Department at telephone number (304) 558-3940.

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Dale W. Steager
State Tax Commissioner

State Tax Department
Property Tax Division
P. O. Box 2389
Charleston, WV 25328-2389

Operator on Duty 8:30 am - 5:00 pm
Monday through Friday
Phone: (304) 558-3940
FAX: (304) 558-1843

OTHER

Dave Hardy
Secretary of Revenue

Dale W. Steager
State Tax Commissioner

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ADMINISTRATIVE NOTICE 2021-13

PROPERTY TAX
STATE TAX COMMISSIONER'S STATEMENT
CONCERNING PRIMARY RELIANCE ON THE *GREEN GUIDE*
FOR THE APPRAISAL OF USED HEAVY EQUIPMENT

On May 21, 2013, the State Tax Department filed Legislative Regulations §§ 110 CSR 1P, *et seq.* concerning the appraisal of industrial real and personal property. This notice will address the Department's primary reliance on the *Green Guide* for the appraisal for property tax purposes of used heavy equipment.

DISCUSSION

The *Green Guide for Administrative Valuation and Assessment of Used Construction Equipment* provides a comprehensive, reliable, and up-to-date source for estimates of current market value of construction equipment manufactured during the past ten years.

The values in this guide are derived from an extensive data reporting system supplied by equipment dealers and distributors, manufacturers, auctioneers, and contractors. This information is analyzed by the professional staff of the *Green Guide* using the most up-to-date computerized methods. The values presented in the *Green Guide* are compiled from analysis of used heavy equipment sales. Standard economic analysis (including such factors as inflation and depreciation rates, current replacement costs, average life of equipment, supply and demand, and current construction industry activity) is used in conjunction with actual sales reports and are relied upon when sufficient sales data on any particular piece of equipment is not available.

The values presented in the *Green Guide* represent a nationwide average for equipment in typical working condition. Any dollar amounts shown in this guide are adjusted to fit the mechanical condition of a specific unit. Market conditions also have a bearing on the value of equipment and can vary in different areas. Each section in the *Green Guide* has a value modification map, and where sufficient data exists a percentage change (plus or minus) from average values is indicated by region.

The *Green Guide* has been in publication for over thirty (30) years and there are numerous guides in circulation today that are used by the following industries or categories of industries.

Agriculture Equip. Mfg.	Hwy/Heavy Const. Contractors
Gen. Bldg. Contractors	Const. Material Mfg.
Logging Companies	Mining Companies
State Government	County/Local Government
Construction Dealers	Lift Truck Dealers
Consulting Engineers	Unions/Trade Associations
Appraisers	Auctioneers
Leasing Companies	Banks
Utility/Power	Heavy Equip. Mfg.
Lift Truck Mfg.	Federal Government
Architects	Insurance Companies
Import/Export Companies	Construction Mfg.

The *Green Guide*'s average resale value for heavy equipment that is used by the State Tax Department reflects the national average of prices, adjusted to this region, reflecting equipment sold by dealers and contractors under fair market conditions. It is considered to be the price that an end user and willing buyer will pay for a machine for which he has an immediate use. The *Green Guides* are used and accepted by a wide range of industries and have long been the standard used by the State Tax Department for referencing used heavy equipment values.

For more information concerning the appraisal of used heavy equipment, please contact the Property Tax Division of the State Tax Department at telephone number (304) 558-3940.

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Dale W. Steager
State Tax Commissioner

State Tax Department
Property Tax Division
P. O. Box 2389
Charleston, WV 25328-2389

Operator on Duty 8:30 am - 5:00 pm
Monday through Friday
Phone: (304) 558-3940
FAX: (304) 558-1843

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Dave Hardy
Secretary of Revenue

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State Tax Commissioner

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ADMINISTRATIVE NOTICE 2021-14

PROPERTY TAX
STATE TAX COMMISSIONER'S STATEMENT
FOR THE ALLOCATION OR SEPARATION OF VALUES OF A
POLLUTION CONTROL FACILITY PURSUANT TO §110 CSR 6-5

This notice will discuss the methods contained in Legislative Rules for the valuation of pollution control facilities (see §§ 110 CSR 6-1, *et seq.*) employed by the State Tax Department to allocate or separate salvage value treatment where the pollution control facility produces a profitable by-product or where a part of such facility is required for the operation of the business without regard to the requirements of state or federal air or water quality standards.

DISCUSSION

The State Tax Department has developed two (2) methods by which a pollution control facility will be allocated or separated to establish that portion of value attributable to pollution control activity where the pollution control facility produces a profitable by-product or where a part of such facility is required for the operation of the business without regard to the requirements of State or federal air or water quality standards. These methods are as follows:

COMPONENT METHOD

The component method will receive primary consideration as a method of allocation or separation of values of a pollution control facility. The component method of allocation or separation of values requires the identification of the specific item or component of machinery and/or equipment which is used for the purpose of pollution abatement control, but which is also an integral part of the production process and the identification of the acquisition cost of the specific item or component. The component thus identified will be appraised at five percent (5%) of acquisition cost. (For example, a conveyor belt system is used to transport fuel to a boiler to produce energy. The conveyor belt line, while not a pollution abatement control device, contains water sprays and is totally enclosed to retard dust during the transportation process. While the belt line is not a pollution abatement control device but an integral part of the production process, the dust conveyors and the water sprays are eligible pollution abatement facilities. The acquisition costs of these items eligible for salvage value treatment are readily discernible and will receive salvage value treatment.)

If an item or the cost associated with an item were not discernible, the alternative substitution method would be used.

SUBSTITUTION METHOD

When acquisition costs for eligible pollution abatement control items or components are not discernible or the items or components' use or purposes are such an integral part of the production process that the specific use or task is not clearly ascertainable, the substitution method will be applied.

The substitution method of allocation or separation of valuation is based on the assumption that the value attributable to pollution control equipment is the difference between the value of a similar facility that has the same utility without the pollution abatement attributes and the value of the subject property being appraised which has pollution abatement attributes. (For example, a double-walled pipe used for the transportation of a product from the manufacturing area of the plant to the loading area. A single-walled pipe or other means of transportation is required for the operation of the business whereas the double-walled pipe is specially designed and installed to prevent leaks should the single-wall fail. The cost of double-walled pipe is twenty-five percent higher than single wall. The additional cost of the twenty-five percent would represent the value attributable to pollution abatement control for the purposes of ad valorem taxation.)

For more information concerning the allocation or separation of values of a pollution control facility, please direct your inquiries to the Property Tax Division of the State Tax Department at telephone number (304) 558-3940.

Notice of this determination will be filed in the West Virginia Register.

Issued: January 29, 2021

Dale W. Steager
State Tax Commissioner

State Tax Department
Property Tax Division
P. O. Box 2389
Charleston, WV 25328-2389

Operator on Duty 8:30 am - 5:00 pm
Monday through Friday
Phone: (304) 558-3940
FAX: (304) 558-1843

OTHER

Dave Hardy
Secretary of Revenue

STATE TAX DEPARTMENT

Dale W. Steager
State Tax Commissioner

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OFFICE WEST VIRGINIA SECRETARY OF STATE

ADMINISTRATIVE NOTICE 2021-15

PROPERTY TAX
STATE TAX COMMISSIONER'S STATEMENT
CONCERNING METHODS BY WHICH
RESIDENTIAL REAL ESTATE IS APPRAISED STATEWIDE

This notice will discuss the method by which local county assessors appraise residential real estate statewide through the use of an Integrated Assessment System (IAS).

DISCUSSION

Several years ago, the State Tax Department purchased real estate mass appraisal software called IAS. This software is installed on the network server in Charleston and is accessed through computers in each County Assessor's Office.

Generally, IAS will separately value raw land and structures. This software provides for the entry of data by the local Assessor concerning "comparable sales" of land in particular "neighborhoods" in the county and then prices the value of this land on a "price per front foot or square foot" or by acreage. All such data is entered by tax map and parcel number. In addition, this software contains "replacement cost" pricing features for structures that will allow the local Assessor to enter data such as the size and dimensions of a structure and its rooms, construction materials utilized, quality of construction, date of construction, present condition, style, mechanical systems such as air conditioning and/or furnace, bathrooms, porches, decks, garages, basements, chimneys, exterior and outbuildings. Data collected by the field data collectors/appraisers is entered upon a field card called a "property record card" or "review document" which corresponds to an IAS data entry screen. A data entry clerk then will enter the information taken from the field card into a computer. The IAS software then prices the improvements utilizing construction cost data particularized for that area of the State. A county modifier is utilized to modify the price of the improvements based upon current construction costs.

The local Assessor divides his or her county into "neighborhoods" giving consideration to similarities such as parcel size, roads, topography, costs, type and quality of improvements for land pricing. A neighborhood is "a geographical area exhibiting a high degree of homogeneity in residential amenities, land use, economic and social trends and housing characteristics". Sometimes a large subdivision, town or city will contain several "neighborhoods". Other times a subdivision or agricultural area will be unique and will stand alone as a single neighborhood.

The County Clerk prepares a "Certificate of Transfer" which will state change of ownership, legal description and whether the transfer is deed stamp exempt or not and whether consideration was paid. The County Clerk provides these "Certificates of Transfer" to the Assessor.

The Assessor will receive a copy of the "Certificate of Transfer" for each such conveyance. The Assessor, by tax map and parcel number, will enter into the computer these "transfers" indicating the "consideration" paid for a particular parcel but also indicating by "validity code" whether the sale is a "valid sale", "involved additional parcels", "not open market", "changed after sale", "related person", "forced sale", "land contract", "construction costs" or "included personal property".

Based upon the "transfer" values, that are identified by the Assessor as being valid arms-length sales as defined by State law, the Assessor will generate a "price per front foot or square foot" for smaller parcels or a monetary per acre value for larger parcels in each neighborhood. Again all data is entered by tax map and parcel number. In those "neighborhoods" where there have been insufficient numbers of "transfers" of unimproved land to generate a "price per front foot or square foot" or a monetary per acre value, the Assessor will take a valid "transfer" price for an improved parcel, value the improvements and subtract the price of the improvements to arrive at a value for the land. This method, commonly referred to as a "land residual method", will then generate a "price per front foot" or a per acre value for the raw land in that neighborhood. Each parcel is physically reviewed and adjustments applied to reflect individual variations with each neighborhood.

Mapping is crucial to any mass appraisal. The county tax maps have been generated over the years utilizing recorded plats, recorded descriptions and aerial photography. Tax map and parcel numbers are assigned to each parcel in the county. Based upon lot measurement or acreage derived by mapping, lot dimensions or acreage is entered into the IAS system by tax map and parcel number for each lot or parcel. The "price per front foot" or acreage value for the neighborhood is then applied to each lot or parcel in the neighborhood, as the case may be, to arrive at an appraised value for the land. This appraised value will reflect market value for the subject land.

Field data collection is the key to "pricing" an improvement. The field data collector or appraiser will visit the structure. He will note on the "property record card" the type of structure, the exterior walls, the style of the structure, the age of the structure, the living accommodations to include total number of rooms, bedrooms, family rooms, plumbing, basement, heating, attic, physical condition, other features such as recreation room area, finished basement living area, basement garage, unfinished area, grade factor, cost and design factor and CDU (condition, desirability and utility factor). The field data collector or appraiser will measure the structure and other structures on the lot or parcel and note on the "property record card" the dimensions of each structure and will draw a ground floor sketch of the dwelling or main structure and additions. Finally, the field data collector or appraiser will visit the "other buildings and yard improvements" and note on the "property record card" the "type code", "quantity", "year", "size", "grade", and "condition" of the other improvements. The data entered on the "property record card" or "review document" is then entered into the IAS system by the data entry clerk and the IAS system then generates the depreciated replacement cost value, which is market value of the improvements.

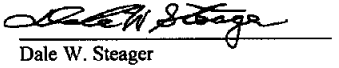
OTHER

The appraised values for improved real property thus determined are compared to the arms-length selling prices of properties that have recently sold to develop an appraisal/sales ratio for each neighborhood. Results from the appraisal/sales ratio are analyzed and neighborhood-pricing factors adjusted to bring the ratio in each neighborhood to within 10% plus or minus of average selling price.

For additional information concerning the appraisal of residential property using the IAS system, please contact the Property Tax Division of the State Tax Department at (304) 558-3940.

Notice of this determination will be filed in the West Virginia Register.

Issued: January 29, 2021



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