



WEST VIRGINIA REGISTER

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This week's publication includes documents submitted by the following agencies:

Air Quality

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Health Care Authority

Insurance Commissioner

Tax

Water Resources Division of Water And Waste Management

CHRONOLOGICAL INDEX, VOLUME XXXVI ISSUE 17

NO NEW RULES WERE FILED FOR PUBLIC COMMENT THIS WEEK

<u>AGENCY</u>	<u>RULE/TYPE</u>	<u>AUTHORITY</u>	<u>HEARING/COMMENT PERIOD/LOCATION</u>
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NO NEW EMERGENCY RULES WERE FILED THIS WEEK

<u>AGENCY</u>	<u>RULE/TYPE</u>	<u>AUTHORITY</u>	<u>EFFECTIVE DATE</u>	<u>DATE NOTICE FOR HEARING</u>
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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	3	BARBERS AND COSMETOLOGISTS
TITLE	7	PROFESSIONAL ENGINEERS
TITLE	10	LICENSED PRACTICAL NURSES
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	24	OSTEOPATHIC MEDICINE
TITLE	25	SOCIAL WORK EXAMINERS
TITLE	26	VETERINARY MEDICINE
TITLE	27	COUNSELING
TITLE	29	SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY
TITLE	31	DIETITIANS
TITLE	33	WASTE MANAGEMENT, DIV. OF WATER AND WASTE MGMT.
TITLE	35	OIL AND GAS
TITLE	36	COAL MINE HEALTH AND SAFETY
TITLE	38	MINING AND RECLAMATION
TITLE	42	LABOR
TITLE	45	AIR QUALITY
TITLE	47	WATER RESOURCES, DIV. OF WATER AND WASTE MGMT.
TITLE	56	MINERS' HEALTH, SAFETY AND TRAINING
TITLE	58	NATURAL RESOURCES
TITLE	60	ENVIRONMENTAL PROTECTION - SECRETARY'S OFFICE
TITLE	61	AGRICULTURE
TITLE	64	HEALTH
TITLE	65	HEALTH CARE AUTHORITY
TITLE	69	HEALTH AND HUMAN RESOURCES
TITLE	76	SENIOR SERVICES
TITLE	78	HUMAN SERVICES
TITLE	81	STATE POLICE
TITLE	87	FIRE COMMISSION
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
TITLE	126	EDUCATION
TITLE	127	SECONDARY SCHOOLS ACTIVITIES COMMISSION
TITLE	133	HIGHER EDUCATION POLICY COMMISSION
TITLE	135	COMMUNITY AND TECHNICAL COLLEGE EDUCATION
TITLE	143	PERSONNEL
TITLE	144	TOURISM
TITLE	146	STATE ELECTION COMMISSION
TITLE	148	ADMINISTRATION
TITLE	149	CRIME, DELINQUENCY AND CORRECTIONS
TITLE	150	PUBLIC SERVICE COMMISSION
TITLE	153	SECRETARY OF STATE
TITLE	157	HIGHWAYS
TITLE	164	SCHOOL BUILDING AUTHORITY
TITLE	174	REAL ESTATE COMMISSION
TITLE	175	ALCOHOL BEVERAGE CONTROL COMMISSION
TITLE	176	ALCOHOL BEVERAGE CONTROL COMMISSION - BEER
TITLE	177	ATHLETIC COMMISSION
TITLE	178	RACING COMMISSION
TITLE	179	LOTTERY COMMISSION
TITLE	190	REAL ESTATE APPRAISER LICENSING & CERTIFICATION BOARD

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Administration (148-23)	Exemptions from Management Services Provided by the Fleet Management Division Legislative			4/5/2019 ERD by 5/17/2019					
Agriculture (61-01)	Animal Disease Control Legislative	6/26/2018	7/26/2018		7/27/2018	Modified & Approved 11/27/2018 Filed 12/10/2018	SB199		
Agriculture (61-29)	Industrial Hemp Legislative	6/27/2018	7/27/2018		7/27/2018	Modified & Approved 11/27/2018 Filed 12/11/2018	SB199		
Agriculture (61-33)	Rural Rehabilitation Loan Program Legislative	6/26/2018	7/26/2018		7/26/2018	Modified & Approved 11/27/2018 Filed 12/4/2018	SB199		
Agriculture (61-34)	Captive Cervid Farming Legislative	6/27/2018	7/26/2018		7/27/2018	Modified & Approved 11/27/2018 Filed 12/4/2018	SB199		
Agriculture (61-36)	Farm to Food Bank Tax Credit Legislative	12/18/2017	1/18/2018	12/18/2017 Effective 1/29/2018	1/19/2018	Approved 11/12/2018	SB199		
Agriculture (61-37)	Agritourism Legislative	6/27/2018	7/27/2018		7/27/2018	Modified & Approved 11/12/2018 Filed 11/26/2018	SB199		
Agriculture (61-38)	Farmers Markets Legislative	6/27/2018	7/27/2018	7/30/2018 Effective 9/10/2018	7/27/2018	Modified & Approved 11/12/2018 Filed 11/26/2018	SB199		
Agriculture (61-39)	Seed Certification Program Legislative	6/27/2018	7/27/2018		7/27/2018	Modified & Approved 11/27/2018 Filed 12/11/2018	SB199		
Air Quality (45-08)	Ambient Air Quality Standards Legislative	6/5/2018	7/10/2018		7/24/2018	Approved 9/20/2018	SB163	4/24/2019	6/1/2019

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC/OCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Air Quality (45-16)	Standards of Performance for New Stationary Sources Legislative	6/5/2018	7/10/2018		7/24/2018	Approved 9/20/2018	SB163	4/24/2019	6/1/2019
Air Quality (45-25)	Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities Legislative	6/5/2018	7/10/2018		7/24/2018	Approved 9/20/2018	SB163	4/24/2019	6/1/2019
Air Quality (45-34)	Emission Standards for Hazardous Air Pollutants Legislative	6/5/2018	7/10/2018		7/24/2018	Approved 9/20/2018	SB163	4/24/2019	6/1/2019
Air Quality (45-36)	(Repeal of) Requirements for Determining Conformity of Transportation Plans, Programs, and Projects Developed, Funded or Approved under Title 23 USC or the Federal Transit Laws, to Applicable Air Quality Implementation Plans (Transportation Conformity) Legislative	6/5/2018	7/10/2018		7/24/2018	Approved 9/20/2018	SB163	4/24/2019	6/1/2019
Air Quality (45-38)	(Repeal of) Provisions for Determination of Compliance with Air Quality Management Rules Legislative	6/5/2018	7/10/2018		7/24/2018	Approved 9/20/2018	SB163	4/24/2019	6/1/2019
Air Quality (45-43)	Cross-State Air Pollution Rule to Control Annual Nitrogen Oxides Emissions, Annual Sulfur Dioxide Emissions, and Ozone Season Nitrogen Oxides Emissions Legislative	6/5/2018	7/10/2018		7/24/2018	Approved 9/20/2018	SB163	4/24/2019	5/1/2019
Athletic Commission (177-01)	Administrative Rules of the WV State Athletic Commission Legislative	6/19/2018	7/19/2018		7/24/2018	Modified & Approved 11/27/2018 Filed 12/4/2018	SB199	4/2/2019	6/1/2019
Dietitians (31-01)	Licensure and Renewal Requirements Legislative	6/22/2018	7/24/2018		7/24/2018	Modified & Approved 9/20/2018 Filed 9/20/2018	SB199		
Education (126-012)	WV System of Support and Accountability (2322) Legislative Exempt	1/11/2019	2/11/2019					3/14/2019	7/1/2019
Education (126-44H)	WV Driver Education Standards (2520.8) Legislative Exempt	8/10/2018	9/10/2018					10/11/2018	7/1/2019

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC/OCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Education (126-044M)	WV College-and Career-Readiness Programs of Study/Standards for Career Technical Education (2520.13) Legislative Exempt	11/15/2018	12/17/2018					1/11/2019	7/1/2019
Education (126-044N)	WV College-and Career-Readiness Standards for Technology and Computer Science (2520.14)	11/15/2018	12/17/2018					1/11/2019	7/1/2019
Education (126-440)	WV Pre-K Standards (Ages 3-5) (2520.15) Legislative Exempt	8/10/2017	9/11/2017					10/12/2017	7/1/2019
Education (126-057)	Adult Education Programs (Policy 2420) Legislative Exempt	4/11/2019	5/13/2019						
Education (126-099)	Expected Behaviors in Safe and Supportive Schools (4373) Legislative Exempt	1/11/2019	2/11/2019					3/14/2019	7/1/2019
Fire Commission (87-04)	State Building Code Legislative	6/22/2018	7/23/2018		7/25/2018	Approved 11/12/2018	SB177	2/22/2019	4/30/2019
Health (64-11)	Behavioral Health Centers Licensure Legislative	6/21/2018	7/21/2018		7/27/2018	Modified & Approved 11/27/2018 Filed 12/6/2018	SB175		
Health (64-14)	Assisted Living Residences Legislative	6/21/2018	7/20/2018		7/27/2018	Modified & Approved 11/12/2018 Filed 11/15/2018	SB175		
Health (64-17)	Food Establishments Legislative	6/21/2018	7/20/2018		7/26/2018	Modified & Approved 11/27/2018 Filed 11/30/2018	SB175	4/4/2019	7/1/2019
Health (64-43)	Food Manufacturing Facilities Legislative	6/21/2018	7/20/2018		7/26/2018	Modified & Approved 11/27/2018 Filed 11/30/2018	SB175	4/4/2019	7/1/2019
Health (64-109)	General Rules-Medical Cannabis Program Legislative								
									4/3/2018 Effective 4/3/2018

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Health (64-110)	Grower/Processors-Medical Cannabis Program Legislative			4/4/2018 Effective 4/4/2018					
Health (64-111)	Laboratories-Medical Cannabis Program Legislative			4/4/2018 Effective 4/4/2018					
Health (64-112)	Dispensaries-Medical Cannabis Program Legislative			4/4/2018 Effective 4/4/2018					
Health (64-113)	Safe Harbor Letter-Medical Cannabis Program Legislative			4/4/2018 Effective 4/4/2018					
Health and Human Resources (69-08)	Chronic Pain Management Clinic Licensure Legislative	6/21/2018	7/21/2018		7/27/2018	Approved 11/12/2018	SB175		
Health and Human Resources (69-12)	Medication-Assisted Treatment – Office-Based Medication-Assisted Treatment Legislative	6/21/2018	7/21/2018		7/27/2018	Modified & Approved 11/12/2018 Filed 11/15/2018	SB175		
Higher Education Policy Commission (133-05)	Guidelines for Governing Boards in Employing and Evaluating Presidents Legislative	6/26/2018	7/26/2018		8/28/2018	Approved 12/14/2018	SB636	3/29/2019	4/29/2019
Higher Education Policy Commission (133-07)	WV Providing Real Opportunities for Maximizing In-State Student Excellence (PROMISE) Scholarship Program Legislative	6/26/2018	7/26/2018	6/26/2018 Effective 6/26/2018	8/7/2018	Amended by LOCEA & Approved 12/14/2018	SB636	4/1/2019	5/1/2019
Highways (157-12)	Employment Procedures Legislative	7/18/2018	8/20/2018	7/19/2018 Effective 8/30/2018	8/30/2018	Approved 11/12/2018	SB190		
Insurance Comm. (114-40)	Credit for Reinsurance Legislative	2/8/2019	3/25/2019	1/18/2019 Effective 3/1/2019	3/26/2019				
Labor (42-05)	Wage Payment and Collection Legislative	6/15/2018	7/16/2018		7/25/2018	Approved 9/20/2018	SB223	4/12/2019	7/1/2019
Labor (42-09)	Child Labor Legislative	6/18/2018	7/19/2018		7/25/2018	Modified & Approved 9/20/2018 Filed 9/26/2018	SB223	4/12/2019	7/1/2019

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC/OCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Labor (42-34)	Regulation of Heating, Ventilating and Cooling Work Legislative	6/15/2018	7/16/2018	6/15/2018 Effective 7/27/2018	7/25/2018	Approved 9/20/2018	SB223	4/12/2019	7/1/2019
Medicine (11-01A)	Licensing and Disciplinary Procedures: Physicians; Podiatric Physicians and Surgeons Legislative	6/22/2018	7/23/2018		7/25/2018	Approved 9/20/2018	SB199	4/12/2019	5/1/2019
Medicine (11-12)	Permitting and Disciplinary Procedures: Educational Permits for Graduate Medical Interns, Residents and Fellows Legislative	6/22/2018	7/23/2018	6/22/2018 Effective 8/3/2018 Amendment 7/25/2018 Withdrawn 8/7/2018 Amendment 8/7/2018 Effective 9/18/2018	7/25/2018	Approved 9/20/2018	SB199	4/12/2019	5/1/2019
Miners Health Safety and Training (56-03)	Rule Governing the Safety of Those Employed in and Around Surface Mines in WV Legislative	6/19/2018	7/19/2018	6/19/2018 Effective 7/31/2018	7/25/2018	Approved 11/27/2018	SB223	3/29/2019	5/1/2019
Miners Health Safety and Training (56-08)	Rule Governing the Submission and Approval of a Comprehensive Mine Safety Program for Coal Mining Operations in the State of West Virginia Legislative	5/30/2018	6/29/2018	5/30/2018 Effective 7/11/2018	7/25/2018	Approved 11/27/2018	SB223	3/29/2019	5/1/2019
Miners Health Safety and Training (56-23)	Rules for Operating Diesel Equipment in Underground Mines in West Virginia Legislative	5/30/2018	6/29/2018	5/29/2018 Effective 7/10/2018	7/25/2018	Approved 11/27/2018	SB223	3/29/2019	5/1/2019
Natural Resources (58-60)	Fishing Regulations Legislative Exempt	4/9/2019	5/9/2019						
Osteopathic Medicine (24-01)	Licensing Procedures for Osteopathic Physicians Legislative	5/24/2018	6/25/2018		7/26/2018	Approved 9/20/2018	SB199		
Pharmacy (15-01)	Licensure and Practice of Pharmacy Legislative	6/21/2018	7/22/2018		7/27/2018	Approved 9/20/2018	SB199		
Pharmacy (15-07)	Registration of Pharmacy Technicians Legislative	6/12/2018	7/16/2018		7/27/2018	Approved 9/20/2018	SB199		
Pharmacy (15-15)	Regulations Governing Pharmacy Permits Legislative	6/21/2018	7/22/2018		7/27/2018	Approved 9/20/2018	SB199		

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC/OCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Pharmacy (15-16)	Regulations Governing Pharmacists Legislative	6/19/2018	7/20/2018		7/27/2018	Approved 9/20/2018	SB199		
Pharmacy (15-17)	Board of Pharmacy Rules for the Substitution of Biological Pharmaceuticals Legislative	6/19/2018	7/21/2018		7/27/2018	Modified & Approved 11/12/2018 Filed 11/16/2018	SB199		
Public Service Commission (150-33)	Rules Governing Electric Utility Net Metering Arrangements and Interconnections Legislative Exempt	9/6/2018 03/13/2019	11/8/2018 04/30/2019						
Racing Commission (178-01)	Throughbred Racing Legislative	6/13/2018	7/13/2018		7/26/2018	Modified & Approved 11/27/2018 Filed 11/28/2018	SB187		
School Building Authority (164-02)	Funding School Building Authority Projects Legislative	6/26/2018	7/26/2018		2/19/2019	Approved 2/19/2019	SB672		
School Building Authority (164-03)	School Planning and Design Criteria Legislative	6/26/2018	7/26/2018		2/19/2019	Approved 2/19/2019	SB672		
School Building Authority (164-04)	Project Administration and Review Legislative	6/26/2018	7/26/2018		2/19/2019	Approved 2/19/2019	SB672		
School Building Authority (164-05)	School Building Authority Contracts and Agreements Legislative	6/26/2018	7/26/2018		2/21/2019	Approved 2/19/2019	SB672		
School Building Authority (164-06)	School Building Authority Reporting Procedures (Repeal) Legislative	6/26/2018	7/26/2018		2/21/2019	Approved 2/19/2019	SB672		
School Building Authority (164-07)	School Access Safety Act Guidelines and Procedures Legislative	6/26/2018	7/26/2018		2/19/2019	Approved 2/19/2019	SB672		
Secretary of State (153-10)	Loan and Grant Programs Under the Help America Vote Act (HAVA) for the Purchase of Voting Equipment, Elections Systems, Software, Services and Upgrades Legislative	5/24/2018	6/25/2018	4/25/2018 Effective 6/6/2018	7/10/2018	Approved 11/27/2018	SB199		
Secretary of State (153-13)	Early Voting In-Person Satellite Precincts Legislative	5/24/2018	6/25/2018	4/25/2018 Effective 6/6/2018	7/10/2018	Approved 11/27/2018	SB199		

RULE MONITOR

AGENCY/SERIES NO	RULE	NOTICE	HEARING	EMER RULE	SEC/STATE	LRMRC/LOCEA ACTION	LEGIS	FINAL FILE	EFFECTIVE
Secretary of State (153-46)	Notaries Public (Repeal) Legislative	6/28/2018	7/28/2018		7/30/2018	Approved 11/27/2018	SB199		
Social Work Examiners (25-01)	Qualifications for the Profession of Social Work Legislative	6/15/2018	7/16/2018		7/25/2018	Modified & Approved 11/12/2018 Filed 11/16/2018	SB199	4/17/2019	7/1/2019
Social Work Examiners (25-07)	Code of Ethics Legislative	6/15/2018	7/16/2018		7/23/2018	Approved 11/12/2018	SB199	4/17/2019	5/1/2019
Tax (110-10F)	Payment of Taxes by Electronic Funds Transfer Legislative	6/27/2018	7/27/2018		7/27/2018	Modified & Approved 11/27/2018 Filed 12/6/2018	SB187	4/9/2019	5/9/2019
Tax (110-21B)	Citizen Tax Credit for Property Taxes Paid Legislative	6/26/2018	7/26/2018		7/27/2018	Approved 11/12/2018	SB187	4/9/2019	5/9/2019
Tax (110-49)	Administration of Tax on Purchases of Wine and Liquor Legislative	6/26/2018	7/26/2018		7/27/2018	Approved 11/12/2018	SB187	4/9/2019	5/9/2019
Tax (110-50C)	Exchange of Information Pursuant to Written Agreement Legislative	6/26/2018	7/26/2018		7/27/2018	Approved 9/20/2018	SB187	4/9/2019	5/9/2019
Treasurer (112-16)	Reporting and Claiming Unknown and Unlocatable Interest Owners Reserved Interests Legislative	6/27/2018	7/27/2018	6/27/2018 Effective 8/8/2018	7/27/2018	Modified & Approved 11/27/2018 Filed 12/13/2018	SB199	4/17/2019	5/1/2019
Water Resources, Div. of Water & Waste Mgmt. (47-02)	Requirements Governing Water Quality Standards Legislative	5/25/2018	7/10/2018		7/27/2018	Modified & Approved 11/27/2018 Filed 12/10/2018	SB163	4/26/2019	5/26/2019
Water Resources, Div. of Water & Waste Mgmt. (47-02B)	Assessment Methodology for the Biological Component of the Narrative Criteria in Wadeable Streams Procedural	3/21/2019	5/6/2019					4/24/2019	5/24/2019



WEST VIRGINIA SECRETARY OF STATE
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 ADMINISTRATIVE LAW DIVISION



WEST VIRGINIA SECRETARY OF STATE
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 4/24/2019 1:28:57 PM
 Office of West Virginia
 Secretary Of State

LEGISLATIVE

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
 BY THE WEST VIRGINIA LEGISLATURE

AGENCY: Air Quality TITLE-SERIES: 45-08
 RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
 RULE NAME: Ambient Air Quality Standards
 CITE STATUTORY AUTHORITY: W.Va. Code § 22-5-4
 The above rule has been authorized by the West Virginia Legislature.
 Authorization is cited in (house or senate bill number) SB 163
 Section § 64-3-1 (b) Passed On 3/28/2019 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:
 June 1, 2019

This rule shall terminate and have no further force or effect from the following date:

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

Yes
 Jason E Wandling -- 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.

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
 BY THE WEST VIRGINIA LEGISLATURE

AGENCY: Air Quality TITLE-SERIES: 45-16
 RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
 RULE NAME: Standards of Performance for New Stationary Sources
 CITE STATUTORY AUTHORITY: W. Va. Code § 22-5-4
 The above rule has been authorized by the West Virginia Legislature.
 Authorization is cited in (house or senate bill number) SB 193
 Section § 64-3-1 (g) Passed On 3/26/2019 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:
 June 1, 2019

This rule shall terminate and have no further force or effect from the following date:

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

Yes
 Jason E Wandling -- 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.



WEST VIRGINIA SECRETARY OF STATE
MAC WARNER
ADMINISTRATIVE LAW DIVISION

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4/24/2019 1:32:07 PM
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Secretary Of State



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MAC WARNER
ADMINISTRATIVE LAW DIVISION

FILED
4/24/2019 1:34:02 PM
Office of West Virginia
Secretary Of State

LEGISLATIVE

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE

AGENCY: Air Quality TITLE-SERIES: 45-25
 RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
 RULE NAME: Control of Air Pollution From Hazardous Waste Treatment, Storage and Disposal Facilities
 CITE STATUTORY AUTHORITY: W.Va. Code §§ 22-5-4 and 22-18-6
 The above rule has been authorized by the West Virginia Legislature.
 Authorization is cited in (house or senate bill number) SB 163
 Section § 64-3-1 (d) Passed On 3/28/2019 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:
 June 1, 2019

This rule shall terminate and have no further force or effect from the following date:

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

Yes
 Jason E Wandling -- 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.

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE

AGENCY: Air Quality TITLE-SERIES: 45-34
 RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
 RULE NAME: Emission Standards for Hazardous Air Pollutants
 CITE STATUTORY AUTHORITY: W.Va. Code § 22-5-4
 The above rule has been authorized by the West Virginia Legislature.
 Authorization is cited in (house or senate bill number) SB 163
 Section § 64-3-1 (a) Passed On 3/28/2019 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:
 June 1, 2019

This rule shall terminate and have no further force or effect from the following date:

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

Yes
 Jason E Wandling -- 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.



WEST VIRGINIA SECRETARY OF STATE
MAC WARNER
ADMINISTRATIVE LAW DIVISION



WEST VIRGINIA SECRETARY OF STATE
MAC WARNER
ADMINISTRATIVE LAW DIVISION

#FILED

4/24/2019 1:36:03 PM

Office of West Virginia
Secretary Of State

#FILED

4/24/2019 1:19:01 PM

Office of West Virginia
Secretary Of State

LEGISLATIVE

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE

AGENCY: Air Quality TITLE-SERIES: 45-36
 RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: Yes
 RULE NAME: Requirements for Determining Conformity of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws, to Applicable Air Quality Implementation Plans (Transportation Conformity)
 CITE STATUTORY AUTHORITY: W.Va. Code §22-5-4
 The above rule has been authorized by the West Virginia Legislature.
 Authorization is cited in (house or senate bill number) SB 163
 Section § 64-3-1 (6) Passed On 3/26/2019 12:00:00 AM

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

June 1, 2019

This rule shall terminate and have no further force or effect from the following date:

AGENCY: Air Quality TITLE-SERIES: 45-38
 RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: Yes
 RULE NAME: Provisions for Determination of Compliance with Air Quality Management Rules
 CITE STATUTORY AUTHORITY: W. Va. Code § 22-5-1 et seq.
 The above rule has been authorized by the West Virginia Legislature.
 Authorization is cited in (house or senate bill number) SB 163
 Section § 64-3-1 (f) Passed On 3/26/2019 12:00:00 AM
 This rule is filed with the Secretary of State. This rule becomes effective on the following date:

June 1, 2019

This rule shall terminate and have no further force or effect from the following date:

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

Yes

Jason E Wandling -- 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.

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

Yes

Jason E Wandling -- 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.



WEST VIRGINIA SECRETARY OF STATE
MAC WARNER
ADMINISTRATIVE LAW DIVISION

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 4/24/2019 1:43:00 PM
 Office of West Virginia
 Secretary Of State

LEGISLATIVE



WEST VIRGINIA SECRETARY OF STATE
MAC WARNER
ADMINISTRATIVE LAW DIVISION

eFILED
 4/28/2019 9:05:06 AM
 Office of West Virginia
 Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
 BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Air Quality TITLE-SERIES: 45-43
 RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No
 RULE NAME: Cross-State Air Pollution Rule to Control Annual Nitrogen Oxides Emissions, Annual Sulfur Dioxide Emissions, and Ozone Season Nitrogen Oxides Emissions
 CITE STATUTORY AUTHORITY: W.Va. Code § 22-5-4
 The above rule has been authorized by the West Virginia Legislature.
 Authorization is cited in (house or senate bill number) SB 163
 Section § 64-3-1.0 Passed On 3/28/2019 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:
May 1, 2019

This rule shall terminate and have no further force or effect from the following date:

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

Yes
 Jason E Wandling -- 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.

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
 BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Water Resources Division Of Water And Waste Management TITLE-SERIES: 47-02
 RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
 RULE NAME: Requirements Governing Water Quality Standards
 CITE STATUTORY AUTHORITY: W. Va. Code §§ 22-11-4(e)(16); 22-11-7b.
 The above rule has been authorized by the West Virginia Legislature.
 Authorization is cited in (house or senate bill number) SB 163
 Section 64-3-1(h) Passed On 3/5/2019 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:
May 26, 2019

This rule shall terminate and have no further force or effect from the following date:

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

Yes
 Jason E Wandling -- 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.



STATE OF WEST VIRGINIA
 DEPARTMENT OF HEALTH AND HUMAN RESOURCES
 BUREAU FOR MEDICAL SERVICES

Commissioner's Office
 350 Capitol Street, Room 251
 Charleston, West Virginia 25301-3712
 Telephone: (304) 558-1700 Fax: (304) 558-1451

Bill J. Crouch
 Cabinet Secretary

LEGISLATIVE

Cynthia E. Beane
 Commissioner

February 22, 2019

FILED

2019 APR 25 P 2: 06

OFFICE WEST VIRGINIA
 SECRETARY OF STATE

To: West Virginia Secretary of State
 Capitol Complex, Main Building

From: Cynthia Beane, MSW, LCSW
 Commissioner

Subject: Material for filing in the Secretary of State's Office

The material indicated below is being forwarded. Please file and publish in the State Register in accordance with the Administrative Procedure Act.

- New Medicaid Chapter
- Medicaid Chapter Update
- New Medicaid Policy
- Medicaid Policy Update
- State Plan Amendment for title XIX, Medicaid
- Other

The following is an explanation of the above material:

Chapter Number: 528.4
 Title: Mammography

Please acknowledge receipt of this material by signing and returning a copy of this document to the attention of:

Margaret Brown
 Bureau for Medical Services
 350 Capitol Street, Room 251
 Charleston, West Virginia 25301-3707

Signature of Person Receiving Above Material

Date

Orders Report

Docket Number	Agency	Respondent	Date Rendered
2019-DB-00080, 2019-DB-00193	Dentistry, WV Board of	John E. Brock, DDS	4/17/2019
19-AP-WCSI-02000	Insurance Commission	EQT Corporation	4/17/2019

FILED

AG OPINION

2019 APR 25 A 10:07



State of West Virginia
Office of the Attorney General

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Patrick Morrissey
Attorney General

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

April 24, 2019

The Honorable Daniel M. James
Morgan County Prosecuting Attorney
77 Fairfax Street, Suite 301
Berkeley Springs, WV 25411

Dear Prosecutor James:

You have asked for an Opinion of the Attorney General addressing several questions that arose in the wake of a racing event that took place last year at a privately owned airport in Morgan County—and that may be held again in future years. This Opinion is being issued pursuant to W. Va. Code § 5-3-2, which provides that the Attorney General may “consult with and advise the several prosecuting attorneys in matters relating to the official duties of their office.” To the extent this Opinion relies on facts, it is based solely on the factual assertions set forth in your correspondence with the Office of the Attorney General and publicly available sources.

Last year, large crowds gathered at the airport to watch and participate in a drag racing—short distance automobile racing—event, which was filmed by the Discovery Channel for the “Street Outlaws” TV program. The organizers of the event, who do not own the airport, charged admission and parking fees, as well as a participation fee for the racers. The organizers also sold merchandise on site, such as branded T-shirts, and numerous vendors sold food and other items to the spectators. You also explained in your letter that many of the spectators wagered on the outcome of the races. You have concerns about whether wagering on races at events like this are lawful, and whether the organizers and vendors would be required to obtain a West Virginia business license or other licenses or permits before any future events.

Your letter raises the following legal questions:

- 1) *Is it necessary for the organizers of a temporary gathering or event, where admission is charged and other commercial transactions occur, to obtain a business license?*

State Capitol Building 1, Room E-26, 1900 Kanawha Boulevard East, Charleston, WV 25305

- 2) *What licenses or permits are required for food or merchandise vendors operating at such an event?*

- 3) *Can the spectators of, or participants in, a drag race legally place a wager on the outcome of that race?*

The answers to the first two questions are straightforward: West Virginia law requires persons or entities engaged in the sale of goods or services for profit to obtain a West Virginia business license and further requires a business that sells food for public consumption to have (and display upon request) the appropriate permit concerning food safety. The answer to the third question is context-dependent. Generally speaking, wagering on automobile racing is regulated under recently enacted sports wagering legislation. Under this statutory scheme, it would be unlawful for the organizers of an event like the one you describe to facilitate wagering or accept bets without a license from the State Lottery Commission. Nevertheless, spontaneous, spectator-driven wagering likely falls outside the scope of the sports wagering statute.

Discussion

Question 1: Licensing For Event Organizers

With limited exception, any person or entity who wishes to lawfully conduct business in West Virginia must obtain a license—a “business registration certificate”—from the State Tax Commissioner. The statutory scheme that imposes this licensure requirement reads, in pertinent part, as follows: “*Registration required.* -- No person shall, without a business registration certificate, engage in or prosecute, in the State of West Virginia, any business activity without first obtaining a business registration certificate from the Tax Commissioner of the State of West Virginia.” W. Va. Code § 11-12-3(a); *see also id.* § 11-12-4(a) (“Except as otherwise provided in this article, a person shall register with the tax commissioner prior to engaging in or prosecuting any business activity in this state.”); W. Va. State Tax Dep’t, *Business Registration*, <https://tax.wv.gov/Business/BusinessRegistration/Pages/BusinessRegistration.aspx> (“Before engaging in business activity in West Virginia, every individual or business entity must obtain a West Virginia business registration certificate from the State Tax Department.”).

“Person” is broadly defined for purposes of this statute to include both natural persons and legal associations: The term refers to “any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, club, society, or other group or combination acting as a unit, or body politic or political subdivision (whether public or private, or quasi-public), and in the plural as well as the singular.” W. Va. Code § 11-12-2(5). Because the organizers of last year’s drag racing event plainly fall within one or more of these categories, they are “persons” under the statute, and thus required to obtain a business registration certificate before engaging in “any business activity.”

“Business activity” is also defined expansively. It encompasses:

all purposeful revenue-generating activity engaged in or caused to be engaged in with the object of gain or economic benefit, either direct or indirect, and all activities of this

state and its political subdivisions which involve the sale of tangible personal property or the rendering of service when such service activities compete with or may compete with the activities of another person.

W. Va. Code § 11-12-2(b)(2). The Supreme Court of Appeals has not had occasion to interpret this statutory language, but by its plain terms the statute almost certainly includes an event like the one you described. There is no indication that the organizers are part of a non-profit organization or that the event was a charity fundraiser. Indeed, because the organizers charged spectators for both admission and parking, collected a participation fee from drivers, and sold T-shirts and other memorabilia, the event appears to have been a "purposeful revenue-generating activity" whose "object" was "gain or economic benefit."

Neither do any exceptions apply to the general requirement to obtain a business registration certificate. First, the Legislature expressly excluded some types of racing events from the "business activity" definition, but not automobile races. Specifically, the term does not include "[t]he conduct of a horse or dog race meeting by any [licensed] racing association" or "[t]he sale of any commodity during the conduct of a licensed horse or dog race meeting." W. Va. Code § 11-12-2(b)(2)(E), (G). The fact that the Legislature exempted some racing events strongly indicates that it understood the definition would apply to *other* racing events it did not name.

It also does not matter to this analysis that the event was confined to a single weekend. Although the Legislature crafted an exception for "[o]ccasional or causal sales of property or services," W. Va. Code § 11-12-2(b)(2)(I), the statute expressly limits its application to sales of "tangible personal property not held or used by a seller in the course of an activity for which a business registration certificate is required," and emphasizes that it does not apply to "a series of sales or exchanges sufficient in number, scope and character to constitute a business activity requiring the holding of a business registration certificate." *Id.* § 11-12-2(b)(4). Selling tickets and parking passes is much different from, say, a one-off sale of a household item to a friend, particularly where event organizers engage in a "series of sales" to hundreds or thousands of spectators.

Finally, it is irrelevant that the organizers do not appear to have a continuous or permanent presence in West Virginia. Section 11-12-3 expressly contemplates application of the licensure requirement to "transient vendors." The statute defines a "transient vendor" as "any person" who "brings into this state . . . or purchases in this state, tangible personal property the sale or use of which is subject to one or more taxes administered by the tax commissioner" and who does "not maintain an established office, distribution house, sales house, warehouse, service enterprise, residence from which business is conducted, or other place of business with this state." W. Va. Code § 11-12-2(e)(1). There are separate requirements that apply to transient vendors, but significantly, they apply in "[a]ddition[]" to the general requirement to obtain a business registration certificate. *Id.* § 11-12-3(a)(1) ("Additionally, before beginning business in this state, . . . a transient vendor, shall comply with the provision of sections twenty through twenty-five of this article."). The additional requirements include bond and notification provisions, and also reemphasize the need to "obtain a business registration certificate from the tax commissions," *id.* § 11-12-20(a), and to "publicly display the certificate whenever conducting business in this

state" and "exhibit the certificate upon the request of an authorized employee of the tax commissioner or any law-enforcement officer," *id.* § 11-12-20(c).

Organizers of events like the one you described are thus required to obtain a business registration certificate before operating in the State.

Question 2: Licensing/Permitting For Vendors

Your second question asks about the licensing requirements for food and merchandise vendors who operate independent of event organizers. As an initial matter, a similarly straightforward analysis controls with respect to business registration certificates: There is no indication that any of these vendors operated not-for-profit, and selling food or other tangible items to spectators is quite plainly "purposeful revenue-generating activity" undertaken for "the object of gain or economic benefit." W. Va. Code § 11-12-1(b)(2). Accordingly, these vendors are also subject to the business registration certificate requirement.

Food vendors must also comply with regulations promulgated by the West Virginia Department of Health and Human Resources ("DHHR"), along with its constituent departments and agencies. The Legislature delegated to DHHR and these related agencies regulatory authority over restaurants and other entities that serve food to members of the public. *See* W. Va. Code §§ 16-1-4, 16-6-2. As most relevant here, one of DHHR's subordinate entities, the West Virginia Bureau for Public Health, has adopted (with limited modifications) the "Federal Food Code"—a comprehensive model regulatory scheme of "enforceable provisions" designed to "mitigat[e] risk factors known to cause foodborne illness." U.S. Food & Drug Admin., Food Code 2005 ("Food Code"), available at <https://www.fda.gov/food/guidanceregulation/retailfoodprotection/foodcode/ucm2016793.htm>; *see also* W. Va. Code St. R. § 64-17-3.1 (incorporating the Food Code by reference, with minor alterations).

Under West Virginia's version of the Food Code,¹ "[a] person may not operate a food establishment without a valid permit to operate issued by the [designated] regulatory authority." Food Code § 8-301.11. West Virginia defines the term "food establishment" as "[a]n operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption." W. Va. Code St. R. §§ 64-17-4.1. Restaurants are the most common examples, but the definition also includes "satellite" or "vending location[s]" that are "conducted in a mobile, stationary, temporary, or permanent facility." *Id.* §§ 64-17-4.1.a, 64-17-4.2.b. Temporary food vendors at events like last year's drag racing event are therefore "food establishments" subject to the permit requirement.

Local boards of health are the regulatory bodies charged with issuing permits to food establishments and overseeing compliance with the Food Code. *See* W. Va. Code § 16-2-11(a)

¹ During the 2019 Regular Legislative Session, the Bureau for Public Health promulgated and the Legislature approved an updated version of W. Va. Code St. R. § 64-17-3.1. *See* 2019 WV REG TEXT 495875. This updated regulation incorporates by reference the 2013 version of the Food Code, and will go into effect on July 1, 2019. There are only minor changes between the 2005 and 2013 versions of the Food Code, none of which will affect the substance of this Opinion after the new regulation goes into effect.

(providing, *inter alia*, that “each local board of health . . . shall . . . promot[e] and maintain[] . . . clean and safe . . . food [by] the administering of public health laws . . . as to . . . the sanitation of . . . food”). The Morgan County Health Department oversees food-safety regulation and compliance related to the Food Code more generally in Morgan County, and makes clear that it is responsible for “Temporary Food Establishments located at fairs, festivals, roadside stands, etc.” no less than permanent establishments. See Morgan County Health Dep’t, *Environmental Services*, “Food Safety Program,” <http://www.morgancountyhealthdept.com/food-safety.html>. The Morgan County Health Department is also authorized under the Food Code to “summarily suspend” a food establishment’s permit upon determination that an “imminent health hazard exists,” Food Code § 8-804.10, and “all food operations shall immediately cease” after a suspension, *id.* § 8-804.3(A). Failure to maintain a permit or comply with its terms exposes the vendor to potential “administrative” remedies, see *id.* § 8-801.10; “reasonable civil penalties,” such as the “closure of [the] food establishment,” *id.* §§ 8-806.40, 8-813.10(B); and even “criminal proceedings,” *id.* § 8-811.10.

In addition to a general business registration certificate, then, any vendor that “provides food for human consumption,” W. Va. Code St. R. § 64-17-4.1, at a future racing event must obtain a permit from the Morgan County Health Department.

Question 3: *Wagering On Automotive Racing*

Your final question concerns the legality of gambling at events like the one that took place last year. Determining the legal status of a specific form of gambling is a context-dependent inquiry. As an initial matter, there is no general prohibition against wagering in West Virginia.² Prior to 1984, Article VI, Section 36 of the West Virginia Constitution contained an “absolute prohibition against lotteries.” *State ex rel. Mountaineer Park, Inc. v. Polan*, 190 W. Va. 276, 281, 438 S.E.2d 308, 313 (1993). Yet even before the amendment removing that ban on lotteries was enacted, the Supreme Court of Appeals recognized the rule that, unless specifically prohibited by statute, individuals could “indulge in certain games of amusement, or even bet on them, to a limited extent.” *State v. Gaughan*, 55 W. Va. 692, 48 S.E. 210, 212 (1904) (emphasis added). Indeed, if all gambling or wagering were unlawful, West Virginia Code § 61-10-9—which makes it a misdemeanor for “any person playing at any game, or making a wager” to “cheat, or by fraudulent means win or acquire . . . money or [an]other valuable thing”—would be superfluous.

² Once, in dicta, the Supreme Court of Appeals described “common gambling” as “an offense at common law.” *State v. Chesapeake & Potomac Tel. Co. of W. Va.*, 121 W. Va. 420, 4 S.E.2d 257, 259 (1939). This brief reference was unnecessary to the disposition of the case, has never been repeated or otherwise affirmed by our supreme court, and is contradicted by multiple other courts, including the supreme court of Virginia, the State from which West Virginia’s common law descended. See *Parr v. Com.*, 198 Va. 721, 725, 96 S.E.2d 160, 163 (1957) (“It is well settled that gambling and keeping a gambling house are distinct offenses, and that while gambling is not an offense at common law, keeping a common gambling house is.”); see also, e.g., *State v. Felton*, 239 N.C. 575, 581, 80 S.E.2d 625, 629-30 (1954) (“[G]ambling *per se* is not a crime at common law. . . .”); *Hurvich v. City of Birmingham*, 46 So.2d 577, 580 (Ala. Ct. App. 1950) (“[A]t common law gambling, or the keeping of a gambling device, was not an offense.”). In light of these authorities and the complex statutory scheme that now governs gambling and lotteries in this State, the concept of gambling as a common-law offense almost certainly has no continued vitality.

AG OPINION

The closest our courts have come to a categorical bar is on one-sided games, or those that are so skewed in favor of one participant that “the chances for winning are all on his side,” and “[t]he skill of the player, or his luck, cannot affect the general result of the game.” *Gaughan*, 55 W. Va. 692, 48 S.E. at 213; see also W. Va. Op. Att’y Gen., 2016 WL 3857081 (July 7, 2016) (explaining that West Virginia’s various criminal statutes concerning gambling “are best interpreted to refer only to games decided wholly or predominantly by chance”); 64 W. Va. Op. Att’y Gen. 8, 1991 WL 628003 (Jan. 8, 1991) (explaining that a person wagering on the outcome of a sporting contest “is utilizing his knowledge about the sporting activity in order to enhance his chances of winning,” which requires “the employment of skill”). Because the results of drag races turn on some combination of skill and luck, this exception would not apply here (absent, of course, evidence that races are rigged). See 64 W. Va. Op. Att’y Gen. 8, 1991 WL 628003 (“[T]he process by which the result is determined in a lottery is purely random. The result of a sporting event, however, is in part determined by the skill of the participants and a variety of other factors that are controlled to some degree by the players.”).

Your question thus turns on the specific statutes that govern gambling related to drag racing events. The Legislature’s recent enactment of the West Virginia Lottery Sports Wagering Act, W. Va. Code § 29-22D-1 *et seq.* (“Sports Wagering Act”), is directly on point. The purpose of this statute is “to protect [the] residents of this state who wager on sports or other events” by “authorizing and establishing a secure, responsible, fair, and legal system of sports wagering.” *Id.* § 29-22D-2(b)(5). The Sport Wagering Act applies both to “operating a sports wagering operation” directly, and to “facilitating” such an operation. *Id.* § 29-22D-20(a). It does not, however, bar sports wagering outright; rather, “the operation of sports wagering and ancillary activities are only lawful when conducted in accordance with the provisions of this article and rules of the [State Lottery] [C]ommission.” *Id.* § 29-22D-2(a). The Act defines “sports wagering” as the “business of accepting wagers on sporting events and other events,” *id.* § 29-22D-3(22), and further defines “sporting events” as “any professional sport or athletic event, any collegiate sport or athletic event, *motor race event*, or any other special event authorized by the commission under this article,” *id.* § 29-22D-3(15) (emphasis added).

Under the Sports Wagering Act’s plain language, there can be no question that it applies to some types of wagering at an event like the one you described. As a “motor race event,” drag racing falls squarely within the statute’s sweep under the definition of “sporting event.” This means that anyone engaged in the “business of accepting wagers on” drag racing is participating in “sports wagering” as defined by the statute, and must therefore comply with all of the statutory limits and licensing requirements. The analysis would also be the same for any third-party individuals or entities who “facilitat[e]” sports wagering at a drag race, W. Va. Code § 29-22D-20(a), such as a “bookie” or bet clearinghouse.

That being said, we do not suggest that all wagers on the outcome of a drag race are necessarily unlawful or otherwise subject to the Sports Wagering Act. The Legislature knows how to categorically criminalize specific forms of gambling: West Virginia Code § 3-9-22, for example, provides that “[i]t shall be unlawful to bet . . . on any election held in this state,” and West Virginia Code § 61-10-5 makes it a misdemeanor if “any person” bets money “on any game of chance.” The Sports Wagering Act stops short of this absolute language. Instead, it defines “sports

AG OPINION

wagering" as the "business of accepting wagers on sporting events," W. Va. Code § 29-22D-3(22) (emphasis added), and criminalizes only "accepting, facilitating, or operating a sports wagering operation" where done without the requisite license, *id.* § 29-22D-20(a) (emphasis added). This emphasis on betting operations highlights the Legislature's intent in the statute to restrict systematic sports wagering run by unregulated businesses or syndicates. Thus, if the organizers of a drag racing event established odds and accepted wagers for participants, or otherwise actively facilitated gambling at the event without appropriate authorization from the State Lottery Commission, that conduct would be illegal. On the other hand, it is unlikely that wagering by individual spectators that is casual, isolated, or spontaneous would qualify as the "business of accepting wagers" or a "sports wagering operation." The examples above make clear that it would certainly be within the Legislature's power to criminalize this conduct, but the text's focus on the business of wagering militates against an expansive interpretation. Indeed, the Supreme Court of Appeals has repeatedly emphasized that interpretation of criminal statutes should be guided by the rule of lenity, which is intended to "preclude 'expansive . . . interpretations [that] may create penalties for offenses that were not intended by the legislature.'" *State ex rel. Morgan v. Trent*, 195 W. Va. 257, 262, 465 S.E.2d 257, 262 (1995) (citation omitted). Absent clear legislative intent to the contrary, a reviewing court would be unlikely to construe the Sports Wagering Act in a manner that transforms all casual wagering at or on a sporting event into criminal conduct.

* * *

Should an event similar to the one described in your letter take place again, the appropriate authorities would be well within their rights to insist on proof that the organizers and any vendors possess business registration certificates, and that any vendors selling food have a valid permit to operate a food establishment. Additionally, while the Sports Wagering Act does not extend to all wagering on sporting events like drag races, its prohibitions and licensing requirements govern all systematic wagering operations and third-parties who facilitate the business of sports wagering.

Sincerely,



Patrick Morrissey
Attorney General

Lindsay See
Solicitor General

Zachary A. Vigilanco
Assistant Attorney General



State of West Virginia
Office of the Attorney General

Patrick Morrissey
Attorney General

April 24, 2019

The Honorable Lucas J. See
Hardy County Prosecuting Attorney
204 Washington Street, Room 104
Moorefield, WV 26536

Dear Prosecuting Attorney See:

You have asked for an Opinion of the Attorney General regarding the ability of a prosecutor's office to receive initial computer aided dispatches ("CADs") that are maintained by county 911 call centers. This Opinion is being issued pursuant to West Virginia Code § 5-3-2, which provides that the Attorney General "may consult with and advise the several prosecuting attorneys in matters relating to the official duties of their office." To the extent this Opinion relies on facts, it is based solely on the factual assertions in your correspondence with the Office of the Attorney General.

The Hardy County 911 Center ("911 Center") is a county answering point, or "a facility to which enhanced emergency telephone system calls for a county are initially routed for response and where county personnel respond to specific requests for emergency service." W. Va. Code § 24-6-2(2). Whenever the 911 Center dispatches a law-enforcement officer in response to a call, it generates an initial CAD. An initial CAD is used to "track calls, register times and make notations regarding emergency events." *Owner-Operator Indep. Drivers Ass'n, Grain Valley, MO v. PIFERS Serv. Cntr, LLC*, 2016 WL 691602, *3 (W. Va. Pub. Serv. Comm'n Feb. 3, 2016). In your letter, you explain that you asked the 911 Center to send copies of all initial CADs to your office, as well as to the officer, so that your office can "keep up with officer contacts with people who may be on probation or have safety plans, etc." and more easily "interface with urgent information changes or concerns." The 911 Center, however, has declined to provide the initial CADs to your office.

FILED

2019 APR 25 A 10:07

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE
(304) 558-3016
Fax (304) 558-0140

Your letter raises the following legal question:

Does a county answering point have a legal obligation to provide a prosecuting attorney with copies of all initial CADs?

We conclude that West Virginia law gives a county answering point discretion to release this information to a prosecuting attorney, but that disclosure is only mandatory in limited circumstances.

Discussion

West Virginia Code § 24-6-13(a) provides that “[a]ll calls for emergency service reporting alleged criminal conduct which are recorded electronically, in writing or in any other form are to be kept confidential.” A county answering point, however, “may release information to bona fide law-enforcement agencies, the prosecuting attorney of a county or a United States Attorney pursuant to a lawful criminal investigation.” *Id.* § 24-6-13(d). The 911 Center relied on this statutory provision to refuse your office’s request for all initial CADs in Hardy County. And because “the word ‘may’ is permissive and not mandatory,” *Butler v. Tucker*, 187 W. Va. 145, 149 n.4, 416 S.E.2d 262, 266 n.4 (1992), *see also* Syl. pt. 1, *Pioneer Pipe, Inc. v. Swain*, 237 W. Va. 722, 791 S.E.2d 168 (2016), the 911 Center is correct that it had discretion under Section 24-6-13(d) to decline your office’s request. Nevertheless, two sections of the West Virginia Code may override this discretion in certain circumstances.

First, the statute governing information available to a multidisciplinary investigative team (“MDIT”) may require disclosure of initial CADs in certain circumstances. The MDIT scheme is designed to “[p]rovide[] a system for evaluation of and coordinated service delivery for children who may be victims of abuse or neglect and children undergoing status offense and delinquency proceedings.” W. Va. Code § 49-4-401(a)(1). By law, “[t]he prosecuting attorney of each county shall establish a multidisciplinary investigative team in that county” and the county’s MDIT “shall be headed and directed by the prosecuting attorney.” *Id.* § 49-4-402(a). Further, “[s]tate, county and local agencies shall provide the multidisciplinary teams with any information requested in writing by the team as allowable by law or upon receipt of a certified copy of the circuit court’s order directing the agencies to release information in its possession relating to the child.” *Id.* § 49-4-410; *see also id.* § 49-4-402(d) (identical statutory language).

As an initial matter, the requirement in Section 49-4-410 to provide information to an MDIT is triggered when “the team” makes a written request. As the head of the MDIT you have authority to make requests on behalf of the team, but there is no indication from your correspondence that your request was made in that capacity, as opposed to in your role as the prosecuting attorney.

When an MDIT makes a valid request under Section 49-4-410, a county agency like the 911 Center has a mandatory duty to comply—“shall provide,” *see Woodring v. W/hyte*, 161 W. Va. 262, 267, 242 S.E.2d 238, 241 (1978) (“use of the word ‘shall’ in a statute imparts a mandatory duty”)—to the extent “allowable by law.” W. Va. Code § 49-4-410. Even so, the information this

duty covers is very likely limited. Under a literal reading of the text a court might conclude that an MDIT is permitted to demand that *any* state, county, or local agency provide it with *any* information it requests for *any* purpose, unless disclosure is specifically prohibited by law. *See, e.g., Reed v. Exel Logistics, Inc.*, 240 W. Va. 700, 707, 815 S.E.2d 511, 518 (2018) (explaining) that where the text of a statute is clear, there is no need to use other tools of statutory interpretation). Several factors, however, push against this conclusion. As our supreme court has repeatedly emphasized, “The primary object in construing a statute is to ascertain and give effect to the intent of the Legislature.” Syl. pt. 3, *Pool v. Greater Harrison Cty. Pub. Serv. Dist.*, 241 W. Va. 233, 821 S.E.2d 14 (2018) (quoting Syl. pt. 1, *Smith v. State Workmen’s Comp. Comm’n*, 159 W. Va. 108, 219 S.E.2d 361 (1975)). In our view, a court is likely to conclude that the Legislature intended to limit an MDIT’s ability to request information to circumstances relevant to the team’s work—and that Section 49-4-410 does not apply where a prosecuting attorney requests information for reasons unrelated to his or her status as head of the MDIT, no matter how helpful that information may be in fulfilling the prosecutor’s other duties.

Read in its entirety, Section 49-4-410 suggests that an MDIT’s authority to request information extends only to information relevant to its child-welfare purposes. As noted above, the statute provides that “[s]tate, county and local agencies shall provide the multidisciplinary teams with any information requested in writing by the team as allowable by law or upon receipt of a certified copy of the circuit court’s order directing the agencies to release information in its possession relating to the child.” W. Va. Code § 49-4-410 (emphasis added). Because a court may only order an agency to provide information to an MDIT when that information relates to a child, it would be an odd result to interpret the statute as allowing the MDIT to demand information from the agency directly for any purposes. This language thus provides some indication that an MDIT demand must be rationally related to a child’s welfare. *See Hammons v. W. Va. Office of Ins. Comm’n*, 235 W. Va. 577, 591, 775 S.E.2d 458, 472 (2015) (“statutes cannot be read in isolation but rather must be considered as a part of the entire statutory scheme of which they form a part”).

Section 49-4-410 also cannot be read in isolation; the entire statutory scheme—including its purpose—bears on its meaning. *See Arbaugh v. Bd. of Educ., Cty. of Pendleton*, 214 W. Va. 677, 683, 591 S.E.2d 235, 241 (2003). An MDIT’s purpose is to “coordinate[] or cooperate[] in the initial and ongoing investigation of all civil and criminal allegations pertinent to cases involving child sexual assault, child sexual abuse, child abuse and neglect.” W. Va. Code § 49-4-402(c) (emphasis added). It would not advance these statutory goals to interpret Section 49-4-410 as allowing an MDIT to request initial CADs when law enforcement is dispatched for reasons that have nothing to do with an offense against a child. If anything, it may detract from the MDIT’s proper purpose by flooding it with information irrelevant to its goals. Further, this analysis is even more compelling for the identical language in Section 49-4-402(d), which is not only in the same article as the statement of the MDIT’s purposes quoted above (as for Section 49-4-410), but appears in the very next paragraph. And given the textual requirement in *both* sections that “the team” must request the information, the statutes appear to contemplate that the information requested will advance the purposes for which an MDIT was established in the first place. The more general purposes for which you requested all initial CADs, by contrast—“keep[ing] up with

AG OPINION

officer contacts with people who may be on probation or have safety plans, etc.”—encompasses a broader zone of interests than those pertinent to an MDIT.

Additionally, the fact that confidentiality requirements governing MDITs limit the use of any information they receive to child-welfare purposes further suggests that MDITs are not entitled to any and all information they may seek. An MDIT “shall assure that all information received and developed in connection with this article remains confidential.” W. Va. Code 49-4-410. And as used in Section 49-4-410, the term “confidential” means that the information may be disclosed to law-enforcement agencies and prosecutors only if there is “a need for that information in order to carry out [their] responsibilities under law to protect children from abuse and neglect.” W. Va. Code § 49-5-101(c)(1); see also *id.* § 49-4-410 (“For purposes of this section, the term ‘confidential’ shall be construed in accordance with article five of this chapter.”). This confidentiality requirement means that even if you were to receive initial CADs in your capacity as head of the Hardy County MDIT, that information could only be shared within your office to carry out your duties as a prosecuting attorney “to protect children from abuse and neglect.” Your office would not have the ability to use information obtained under Section 49-4-410 (or Section 49-4-402(d)) for other purposes, such as tracking probationers’ police contacts more generally.

Finally, a literal reading of the statute—one that would find an MDIT entitled to any information from any state, county, or local agency—could lead to absurd results. Under this broad interpretation, for example, an MDIT could demand that the West Virginia State Tax Department provide the tax returns of every state taxpayer, or that the Division of Motor Vehicles produce the driving records of every licensed driver in the county, and it would be no defense to object that the requests are vastly overbroad as compared to the MDIT’s legitimate purposes. To be sure, there is a significant difference between these hypothetical fishing expeditions and the purposes you have identified, and we have no doubt that your office seeks initial CADs in good faith and to advance your critical responsibilities as a prosecuting attorney. Yet the only basis in the statutory scheme for limiting an MDIT’s ability to request information is one grounded in the team’s child-welfare goals. Because it is “the duty of a court to disregard a construction, though apparently warranted by the literal sense of the words in a statute, when such construction would lead to [] absurdity,” Syl. pt. 3, *State v. Henning*, 238 W. Va. 193, 793 S.E.2d 843 (2016) (citation omitted), we conclude that a court would likely find that an MDIT’s authority under Section 49-4-410 is limited to requests reasonably related to its statutory purposes.

Second, you may also be entitled to certain CADs under West Virginia Code § 7-4-1(a) in your capacity as a prosecuting attorney. This statute provides that “[e]very public officer shall give the prosecuting attorney information regarding the commission of any criminal offense committed within his or her county.” W. Va. Code § 7-4-1(a). As with Section 49-4-410, the Supreme Court of Appeals has not addressed this statute’s scope. We lack sufficient facts to determine whether the head of the 911 center is a “public officer” for purposes of the statute, but if so, a reviewing court would very likely conclude that Section 7-4-1(a) grants a prosecuting attorney the right to receive the information it describes.

As we noted in a previous Opinion last year, “whether a specific government position qualifies as a public officer” is a “simple but difficult” question. W. Va. Op. Att’y Gen., 2018

WL 2947780, *1 (June 6, 2018) (quoting *Harrigan v. Bd. of Regents of W. Va. Univ.*, 49 W. Va. 14, 38 S.E. 698, 701 (1901)). There are five factors in the analysis: (1) “whether the position was created by law”; (2) “whether the position was designated an office”; (3) “whether the qualifications of the appointee have been prescribed”; (4) “whether the one occupying the position has and oath have been prescribed or required”; and (5) “whether the position has and oath have been prescribed or required.” Syl. pt. 4, *Cales v. Town of Meadow Bridge*, 239 W. Va. 288, 800 S.E.2d 874 (2017) (citation omitted). The totality of these five factors are considered when determining whether a position qualifies as a public office. *State ex rel. Carson v. Wood*, 154 W. Va. 397, 410, 175 S.E.2d 482, 490 (1970). Moreover, courts give special consideration to the specific statutory provision at issue. See *City of Bridgeport v. Matheny*, 223 W. Va. 445, 449, 675 S.E.2d 921, 925 (2009).

Here, factor one is satisfied because the 911 Center directorship is a position created by statute. See W. Va. Code § 24-6-5(d). The second factor cuts in the opposite direction because the statute does not designate the position as an office. *Id.* And factor three is likely satisfied because at least one qualification for the position is prescribed by statute. *Id.* § 24-6-5(d) (precluding the 911 Center director from having a felony conviction); but cf. *Matheny*, 223 W. Va. at 449, 675 S.E.2d at 925 (listing four statutory provisions setting police officer qualifications when examining this factor).

We lack necessary information, however, to determine if the remaining factors are satisfied—and thus cannot assess the collective weight of these factors to determine whether a 911 Center director is a public officer. As to factor four, the director’s tenure, salary, bond, and oath have not been prescribed by law, and we do not know if these issues are established elsewhere, such as in Hardy County’s plan for enhanced emergency telephone system. Indeed, publicly available sources suggest that these features may vary by county. We are similarly unable to determine if the 911 Center director “can bind or obligate” the sovereign as relevant to the fifth factor, *Cales*, 239 W. Va. at 298, 800 S.E.2d at 884, or if the 911 Center director is instead “subject to the supervision and policy direction” of others, *Christopher v. City of Fairmont*, 167 W. Va. 710, 714, 280 S.E.2d 284, 286 (1981).

Nevertheless, if additional facts support the conclusion that the 911 Center director is a public officer, Section 7-4-1(a) would provide a solid basis for you to request some initial CADs. Unlike the permissive language in Section 24-6-13(d), “shall” in Section 7-4-1(a) is mandatory. See Syl. pt. 5, *State v. Bostic*, 229 W. Va. 513, 729 S.E.2d 835 (2012) (holding that the word “shall” generally carries a mandatory obligation). Yet under the plain language of this provision, the statute is also limited in scope: the 911 Center is required to provide your office with initial CADs only to the extent that the initial CADs “regard[] the commission of any criminal offense committed within [Hardy County].” W. Va. Code § 7-4-1(a). Situations where a law-enforcement officer may have been dispatched but no criminal offense occurred are not covered by Section 7-4-1(a). Under your statutory authority as a prosecuting attorney and if the 911 Center director is a public officer, your office is thus entitled to the subset of initial CADs involving the commission of a crime.

* * *

AG OPINION

In sum, the 911 Center has full authority to release all initial CADs to your office pursuant to your role as "the prosecuting attorney of a county." W. Va. Code § 24-6-13(d). To the extent the 911 Center declines to exercise this authority, its discretion is not absolute. West Virginia Code Sections 49-4-410 and 49-4-402(d) entitle you to receive information from the 911 Center as the head of the Hardy County MDIT, provided that the request is consistent with the purposes for which the MDIT was created and not made pursuant to your broader prosecutorial functions. Similarly, Section 7-4-1(a) may entitle your office to initial CADs that involve the commission of a crime within Hardy County.

Sincerely,



Patrick Morrissey
Attorney General

Lindsay See
Solicitor General

**WEST VIRGINIA HEALTH CARE AUTHORITY
CERTIFICATE OF NEED**

FILED

100 Dee Drive

Charleston, West Virginia 25311-1600

2019 APR 22 A 10:16

OTHER

April 22, 2019

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

LEGAL NOTICE

The West Virginia Health Care Authority announces the following Certificate of Need activities for the week ending **April 19, 2019**.

LETTERS OF INTENT RECEIVED

April 15, 2019 – Ronceverte Physician Group, LLC, Franklin, Tennessee, CON File #19-1-11613-P, for the development of an ambulatory care center, including office-based sleep medicine services to adults and pediatric patients, at 230 George Street, Beckley, Raleigh County; capital expenditure: \$10,000.

April 15, 2019 – Ronceverte Physician Group, LLC, Franklin, Tennessee, CON File #19-4-11614-P, for the development of an ambulatory care center, including general surgery consultations and post-surgical follow-up, at 176 Medical Center Drive, Rainelle, Greenbrier County; capital expenditure: \$10,000.

April 15, 2019 – Mountain Home Health, Bellington, Barbour County, CON File #19-7-11615-Z, for the establishment of a new home health agency offering services in Randolph and Upshur counties; capital expenditure: \$1,500.

CERTIFICATE OF NEED APPLICATIONS RECEIVED

April 15, 2019 – Pace Enterprises, Inc., Morgantown, Monongalia County, CON File #19-3-11609-BH, for the provision of Title XIX IDD Waiver Services in Kanawha County; no capital expenditure.

April 15, 2019 – Pace Enterprises, Inc., Morgantown, Monongalia County, CON File #19-6-11610-BH, for the provision of Title XIX IDD Waiver Services in Taylor County; no capital expenditure.

April 19, 2019 – United Hospital Center, Inc., Bridgeport, Harrison County, CON File #19-6-11611-H, for the addition of an operating room and related renovations; capital expenditure: \$2,620,000.

APPLICATION FOR EXEMPTION RECEIVED

April 17, 2019 – IPG Enterprises, LLC, Huntington, Cabell County, CON File #19-2-11616-X, for the change of ownership of the assisted living facility currently known as Halls Residential Care.

APPLICATIONS DECLARED COMPLETE AND UNDER REVIEW

An application 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.

EXPEDITED APPLICATIONS

April 9, 2019 - University Healthcare at Home, Martinsburg, Berkeley County, CON File #19-8/9-11605-Z, for the provision of home health services in Mineral and Morgan counties; capital expenditure: \$35,000.

April 10, 2019 - Trinity West, Steubenville, Ohio, CON File #19-11-11603-A, for the acquisition of Dr. Joseph Schreiber's family practice in Hancock County; capital expenditure: \$21,000.

April 12, 2019 - LTACH Morgantown, LLC, Charlotte, North Carolina, CON File #19-6-11601-H, for the development of a twenty-five bed Long Term Acute Care Hospital within Monongalia County General Hospital Company in Morgantown, Monongalia County; capital expenditure: \$1,950,000.

April 15, 2019 - Mulberry Street Management Services, Inc. Employee Stock Ownership Plan Trust, Sharon A. Hayes, Trustee, and Mulberry's Independent Home Services, Inc., Morgantown, Monongalia County, CON File #19-WV-11604-A, for the acquisition of Mulberry Street Management Services, Inc.; capital expenditure: \$12,000,000.

The review cycle for the above-referenced projects is as follows:

April 15, 2019 – Review cycle begins;

May 15, 2019 – Last date for an affected person to request a public hearing on the project. If a public hearing is requested, notice of date, time and place will be issued to affected persons;

May 20, 2019 – If no public hearing is requested, the file will close and no further information or evidence will be accepted by the Authority for the remainder of the review of the application;

June 14, 2019 – Decision on the project will be issued by the Authority.

AMENDED HEARING NOTICE

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



Dave Hardy
Secretary of Revenue

Dale W. Steager
State Tax Commissioner

STATE TAX DEPARTMENT

OTHER

April 15, 2019 – Appalachian Regional Healthcare, Inc. d/b/a Beckley ARH Hospital, Lexington, Kentucky, CON File #19-1-11527-P, for the development of primary (emergency) percutaneous coronary intervention (Primary PCI) services; capital expenditure: \$200,000.

Prehearing Conference: May 8, 2019 at 1:30 p.m.
Administrative Hearing: May 15, 2019 and May 16, 2019 at 9:00 a.m.

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

HEARING NOTICES

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

April 17, 2019 - Reynolds Memorial Hospital, Glen Dale, Marshall County, CON File #18-10-11518-H, for the provision of primary (emergency) percutaneous coronary intervention services; capital expenditure: \$10,000.

The Administrative Hearing has been CANCELLED in the following matter:

April 17, 2019 - Charleston Area Medical Center, Charleston, Kanawha County, CON File #18-3-11463-P, for the development of an ambulatory health care facility at 3257 Teays Valley Road, Hurricane, Putnam County; capital expenditure: \$2,438,000.

AMENDED HEARING ORDER ISSUED

April 15, 2019 – Appalachian Regional Healthcare, Inc. d/b/a Beckley ARH Hospital, Lexington, Kentucky, CON File #19-1-11527-P, for the development of primary (emergency) percutaneous coronary intervention (Primary PCI) services; capital expenditure: \$200,000.

HEARING ORDERS ISSUED

April 17, 2019 - Reynolds Memorial Hospital, Glen Dale, Marshall County, CON File #18-10-11518-H, for the provision of primary (emergency) percutaneous coronary intervention services; capital expenditure: \$10,000.

April 17, 2019 - Charleston Area Medical Center, Charleston, Kanawha County, CON File #18-3-11463-P, for the development of an ambulatory health care facility at 3257 Teays Valley Road, Hurricane, Putnam County; capital expenditure: \$2,438,000.

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

Severance Tax – Privileges of Producing Limestone or Sandstone

ADMINISTRATIVE NOTICE 2019-23

During the 2019 regular session of the West Virginia Legislature, H.B. 3142 was enacted. This bill terminates the severance tax imposed by W. Va. Code § 11-13A-3 on the privileges of producing limestone or sandstone for sale, profit or commercial use effective July 1, 2019.

Termination of these taxes does not relieve any person of any liability or duty to pay tax imposed with respect to privileges exercised before July 1, 2019. Additionally, this termination does not affect the tax on the privilege of producing other natural resources such as sand and gravel.

Issued: April 25, 2019

Dale W. Steager
State Tax Commissioner

FILED

2019 APR 25 A 10:54

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Tax Commissioner's Office, 1001 Lee Street East, P.O. Box 11771, Charleston, WV 25339-1771
Telephone 304-558-0751
Fax 304-558-8999



Dave Hardy
Secretary of Revenue

STATE TAX DEPARTMENT

OTHER

FILED
Dale W. Steagler
State Tax Commissioner

2019 APR 25 A 10: 55

OFFICE WEST VIRGINIA
SECRETARY OF STATE

ADMINISTRATIVE NOTICE 2019-22

Subject: Partnerships, limited liability companies and other business entities subject to Subchapter K of the Internal Revenue Code of 1986 as amended.

The United States Congress enacted new federal partnership audit rules and procedures that apply to tax years beginning on and after January 1, 2018. As used here, "partnership" means any business entity subject to Subchapter K of the Internal Revenue Code.

The West Virginia personal income tax, in W. Va. Code § 11-21-1 *et seq.*, and the West Virginia corporation net income tax, in W. Va. Code § 11-24-1 *et seq.*, are conformity statutes, meaning that the computation of West Virginia income tax begins with an individual's federal adjusted gross income for the taxable year, or with federal taxable income, in the case of corporations subject to tax under Subchapter C of the Internal Revenue Code.

Under the new federal partnership audit rules, partnerships that cannot elect out of the new audit rules, or that fail to elect out of the new rules, will be audited by the Internal Revenue Service and, if the audit determines that additional federal income tax is owed, the partnership will be billed for an imputed federal tax amount, which the partnership may pay or push out to its partners.

During the 2019 regular session of the West Virginia Legislature, enrolled Senate Bill 499 was enacted, which conforms West Virginia's tax treatment of partnerships and partners with how they are treated for federal income tax purposes, for taxable years beginning on and after January 1, 2018. See Enrolled Senate Bill 499, effective July 1, 2019. This bill requires partnerships to notify the Tax Commissioner of federal audit adjustments and provides for the partnership to pay the additional West Virginia income taxes attributable to the federal audit adjustments, or to push the additional West Virginia tax out to its partners. When the federal audit adjustments result in an overpayment of West Virginia income taxes, a procedure for claiming a refund is provided.

Under the new federal audit rules, the tax matters partner no longer exists and is replaced by the partnership representative, who has considerably more authority than did the tax matters partner. Under Senate Bill 499, the West Virginia partnership representative is

Tax Commissioner's Office, 1001 Lee Street East, P.O. Box 11771, Charleston, WV 25339-1771
Telephone: 304-558-0751
Fax: 304-558-8999

the federal partnership representative, unless a separate West Virginia partnership representative is designated by the partnership.

It is likely that many West Virginia partnerships will be able to elect out of the new federal partnership audit regimes. When this election is made for federal income tax purposes, the partnership will not be subject to the new partnership audit rules in W. Va. Code § 11-21A-1 *et seq.* These partnerships and their partners will continue to be treated for tax purposes like they have historically been treated for federal and state income tax purposes.

A copy of enrolled Senate Bill 499 is available at the Legislature's website: http://www.wvlegislature.gov/Bill_Status/bill_status.cfm

Issued: April 25, 2019

Dale W. Steagler

State Tax Commissioner