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# SOUTH CAROLINA STATE REGISTER

PUBLISHED BY  
THE LEGISLATIVE COUNCIL  
of the  
GENERAL ASSEMBLY

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This issue contains notices, proposed regulations, emergency regulations, final form regulations, and other documents filed in the Office of the Legislative Council, pursuant to Article 1, Chapter 23, Title 1, Code of Laws of South Carolina, 1976.

# *South Carolina State Register*

An official state publication, the *South Carolina State Register* is a temporary update to South Carolina's official compilation of agency regulations--the *South Carolina Code of Regulations*. Changes in regulations, whether by adoption, amendment, repeal or emergency action must be published in the *State Register* pursuant to the provisions of the Administrative Procedures Act. The *State Register* also publishes the Governor's Executive Orders, notices or public hearings and meetings, and other documents issued by state agencies considered to be in the public interest. All documents published in the *State Register* are drafted by state agencies and are published as submitted. Publication of any material in the *State Register* is the official notice of such information.

## STYLE AND FORMAT

Documents are arranged within each issue of the *State Register* according to the type of document filed:

**Notices** are documents considered by the agency to have general public interest.

**Notices of Drafting Regulations** give interested persons the opportunity to comment during the initial drafting period before regulations are submitted as proposed.

**Proposed Regulations** are those regulations pending permanent adoption by an agency.

**Pending Regulations Submitted to the General Assembly** are regulations adopted by the agency pending approval by the General Assembly.

**Final Regulations** have been permanently adopted by the agency and approved by the General Assembly.

**Emergency Regulations** have been adopted on an emergency basis by the agency.

**Executive Orders** are actions issued and taken by the Governor.

## 2006 PUBLICATION SCHEDULE

Documents will be accepted for filing on any normal business day from 8:30 A.M. until 5:00 P.M. All documents must be submitted in the format prescribed in the *Standards Manual for Drafting and Filing Regulations*.

To be included for publication in the next issue of the *State Register*, documents will be accepted no later than 5:00 P.M. on any closing date. The modification or withdrawal of documents filed for publication must be made **by 5:00 P.M.** on the closing date for that issue.

|                     | Jan. | Feb. | Mar. | Apr. | May  | June | July | Aug. | Sept. | Oct.  | Nov.  | Dec.  |
|---------------------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|
| Submission Deadline | 1/13 | 2/10 | 3/10 | 4/14 | 5/12 | 6/9  | 7/14 | 8/11 | 9/8   | 10/13 | 11/10 | 12/8  |
| Publishing Date     | 1/27 | 2/24 | 3/24 | 4/28 | 5/26 | 6/23 | 7/28 | 8/25 | 9/22  | 10/27 | 11/24 | 12/22 |

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## ADOPTION, AMENDMENT AND REPEAL OF REGULATIONS

To adopt, amend or repeal a regulation, an agency must publish in the *State Register* a Notice of Drafting; a Notice of the Proposed Regulation that contains an estimate of the proposed action's economic impact; and, a notice that gives the public an opportunity to comment on the proposal. If requested by twenty-five persons, a public hearing must be held at least thirty days after the date of publication of the notice in the *State Register*.

After the date of hearing, the regulation must be submitted to the General Assembly for approval. The General Assembly has one hundred twenty days to consider the regulation. If no legislation is introduced to disapprove or enacted to approve before the expiration of the one-hundred-twenty-day review period, the regulation is approved on the one hundred twentieth day and is effective upon publication in the *State Register*.

## EMERGENCY REGULATIONS

An emergency regulation may be promulgated by an agency if the agency finds imminent peril to public health, safety or welfare. Emergency regulations are effective upon filing for a ninety-day period. If the original filing began and expired during the legislative interim, the regulation can be renewed once.

## REGULATIONS PROMULGATED TO COMPLY WITH FEDERAL LAW

Regulations promulgated to comply with federal law are exempt from General Assembly review. Following the notice of proposed regulation and hearing, regulations are submitted to the *State Register* and are effective upon publication.

## EFFECTIVE DATE OF REGULATIONS

**Final Regulations** take effect on the date of publication in the *State Register* unless otherwise noted within the text of the regulation.

**Emergency Regulations** take effect upon filing with the Legislative Council and remain effective for ninety days. If the original ninety-day period begins and expires during legislative interim, the regulation may be refiled for one additional ninety-day period.

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South Carolina General Assembly Home Page: [www.scstatehouse.net](http://www.scstatehouse.net)

| DOC<br>NO. | RAT FINAL<br>NO. ISSUE | SUBJECT                                                          | EXP.<br>DATE | AGENCY                                 |
|------------|------------------------|------------------------------------------------------------------|--------------|----------------------------------------|
| 2955       |                        | Motorist Insurance Identification Database (Repeal)              | 1/15/06      | Department of Public Safety            |
| 2958       |                        | Voluntary Check-off Funds                                        | 1/17/06      | Department of Revenue                  |
| 2935       |                        | Property Tax (Repeal 117-8)                                      | 1/17/06      | Department of Revenue                  |
| 2915       |                        | Repeal of Bulk Sales Regulation                                  | 1/17/06      | Department of Revenue                  |
| 2936       |                        | Sales and Use Tax Exemption for Machines                         | 1/17/06      | Department of Revenue                  |
| 2937       |                        | Alcoholic Beverages, Beer and Wine                               | 1/17/06      | Department of Revenue                  |
| 2914       |                        | Electric Power Tax                                               | 1/17/06      | Department of Revenue                  |
| 2966       |                        | Repeal Annual Renewal Plan                                       | 2/19/06      | Department of Insurance                |
| 2968       |                        | Workers' Compensation Assigned Risk Rates                        | 2/19/06      | Department of Insurance                |
| 2942       |                        | Graduation Requirements                                          | 2/20/06      | Board of Education                     |
| 2962       |                        | Implementation of Emergency Health Powers Act                    | 2/20/06      | Department of Health and Envir Control |
| 2945       |                        | Standards for Licensing Tattoo Facilities                        | 2/21/06      | Department of Health and Envir Control |
| 2973       |                        | Repeal of Duplicative Regulations Included in Nurse Practice Act | 3/12/06      | LLR: Board of Nursing                  |
| 2971       |                        | Assessment Program                                               | 3/22/06      | Board of Education                     |
| 2975       |                        | 211 Network Provider Certification Requirements                  | 4/09/06      | Budget and Control Board               |
| 2970       |                        | Seasons, Limits, Restrictions on WMA's, Turkey Hunting           | 4/11/06      | Department of Natural Resources        |
| 2969       |                        | Wildlife Management Area Regulations                             | 4/11/06      | Department of Natural Resources        |
| 2978       |                        | CSO Mortality Table                                              | 4/22/06      | Department of Insurance                |
| 2974       |                        | Settlement, Proof of Compliance, Self-Ins, Financial, Audits     | 4/22/06      | Workers' Compensation Commission       |
| 2976       |                        | Representation of Parties and Intervenors                        | 5/10/06      | LLR: Occupat Health and Safety Rev Bd  |
| 2982       |                        | Child Labor                                                      | 5/10/06      | LLR: Office of Labor Services          |
| 3014       |                        | SC HOPE Scholarship Program                                      | 5/10/06      | Commission on Higher Education         |
| 3015       |                        | SC LIFE Scholarship Program                                      | 5/10/06      | Commission on Higher Education         |
| 3016       |                        | Lottery Tuition Assist Prog Two-Year Pub & Independ Instit.      | 5/10/06      | Commission on Higher Education         |
| 3017       |                        | Palmetto Fellows Scholarship Program                             | 5/10/06      | Commission on Higher Education         |
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| 2999       |                        | Additional Areas of Certification                                | 5/10/06      | Board of Education                     |
| 2996       |                        | Displaying the Flag                                              | 5/10/06      | Board of Education                     |
| 2984       |                        | Denial, Revocation and Suspension of Credentials                 | 5/10/06      | Board of Education                     |
| 2995       |                        | Fees and Charges of Consumer Credit Counseling Org Licensees     | 5/10/06      | Consumer Affairs                       |
| 3012       |                        | Licensees, Ethics for Supervisors, Standards for Supervision     | 5/10/06      | LLR: Counselors, Therapists, Psycho-Ed |
| 3026       |                        | Maritime Security                                                | 5/10/06      | SC Maritime Sec Comm Naval Militia     |
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| 3007       |                        | Imported Fire Ant Quarantine                                     | 5/18/06      | Clemson University                     |
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| 3032       |                        | Sales and Use Tax - Warranty Agreements                          | 5/20/06      | Department of Revenue                  |
| 2985       |                        | Sales and Use Tax - Manufactured and Modular Homes               | 5/20/06      | Department of Revenue                  |
| 3028       |                        | Types and Levels of Credential Classification (Repeal)           | 5/20/06      | Board of Education                     |
| 3029       |                        | Requirements for Credential Advancement (Repeal)                 | 5/20/06      | Board of Education                     |
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**Committee Requested Withdrawal:**

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**Resolution Introduced to Disapprove**

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## **2 EXECUTIVE ORDERS**

### **EXECUTIVE ORDER NO. 2005-27**

**WHEREAS**, a vacancy exists on the Board of Trustees of the University of South Carolina as a result of the death of Robert N. McLellan, who held a seat on the Board for the Tenth Judicial Circuit; and

**WHEREAS**, the undersigned is authorized to appoint a member to the Board of Trustees of the University of South Carolina in the event of a vacancy pursuant to Section 59-117-30 of the South Carolina Code of Laws, as amended; and

**WHEREAS**, John W. Fields is a fit and proper person to serve as a member of the Board of Trustees of the University of South Carolina for the Tenth Judicial Circuit.

**NOW, THEREFORE**, pursuant to the authority vested in me by the Constitution and Statutes of this State, I hereby appoint John W. Fields to the Board of Trustees of the University of South Carolina for the Tenth Judicial Circuit. This order is effective immediately and remains in effect for the period prescribed by law.

**GIVEN UNDER MY HAND AND THE GREAT  
SEAL OF THE STATE OF SOUTH CAROLINA,  
THIS 22nd DAY OF DECEMBER 2005.**

**MARK SANFORD**  
**Governor**

### **EXECUTIVE ORDER NUMBER 2005-28**

**WHEREAS**, Randolph Murdaugh, III, retired as Solicitor of the Fourteenth Judicial Circuit, effective December 31, 2005; and

**WHEREAS**, Judge Perry M. Buckner, residing in the Fourteenth Judicial Circuit, has certified the vacancy to the undersigned; and

**WHEREAS**, the undersigned is authorized to appoint a Solicitor in the event of a vacancy pursuant to Sections 1-3-220(1) and 1-7-390 of the South Carolina Code of Laws, as amended; and

**WHEREAS**, Isaac McDuffie Stone, III, a resident of Beaufort County, South Carolina, is a fit and proper person to serve as Solicitor of the Fourteenth Judicial Circuit.

**NOW, THEREFORE**, pursuant to the authority vested in me by the Constitution and Statutes of this State, I hereby appoint Isaac McDuffie Stone, III, as Solicitor of the Fourteenth Judicial Circuit, effective December 31, 2005.

**GIVEN UNDER MY HAND AND THE GREAT  
SEAL OF THE STATE OF SOUTH CAROLINA,  
THIS 29TH DAY OF DECEMBER 2005.**

**MARK SANFORD**  
**Governor**

**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

In accordance with Section 44-7-200(C), Code of Laws of South Carolina, the public is hereby notified that a Certificate of Need application has been accepted for filing and publication January 27, 2006, for the following project(s). After the application is deemed complete, affected persons will be notified that the review cycle has begun. For further information, please contact Mr. Albert N. Whiteside, Director, Division of Planning and Certification of Need, 2600 Bull St., Columbia, SC 29201 at (803) 545-4200.

**Affecting Anderson County**

Conversion of the existing ten (10) bed nursing home unit to seven (7) comprehensive rehabilitation beds resulting in a total licensed bed capacity of thirty-seven (37) comprehensive rehabilitation beds within the facility.  
AnMed HealthSouth Rehabilitation Hospital  
Anderson, South Carolina  
Project Cost: \$625

**Affecting Beaufort County**

Replacement of a 0.2T Magnetic Resonance Imaging (MRI) unit with a 0.35T MRI unit and construction to house the new unit.  
Beaufort Open MRI, LLC  
Port Royal, South Carolina  
Project Cost: \$1,395,386

**Affecting Greenville County**

Replacement of the existing fixed Positron Emission Tomography (PET) unit with a fixed Positron Emission Tomography/Computed Tomography (PET/CT) unit.  
The Carolinas Clinical P.E.T. Institute  
Greenville, South Carolina  
Project Cost: \$2,557,570

Upgrade of one (1) existing cardiac catheterization laboratory located in the Memorial Medical Office Building with relocation to Greenville Memorial Hospital.  
Greenville Memorial Hospital  
Greenville, South Carolina  
Project Cost: \$2,744,663

**Affecting Greenwood County**

Construction of a comprehensive rehabilitation hospital with thirty-four (34) comprehensive rehabilitation beds and twelve (12) nursing home beds that will not participate in the Medicaid (Title XIX) Program.  
Greenwood Regional Rehabilitation Hospital  
Greenwood, South Carolina  
Project Cost: \$13,090,636

## 4 NOTICES

### Affecting Lexington County

Replacement of the existing mobile Positron Emission Tomography (PET) unit operating three (3) days per week with a Mobile Positron Emission Tomography/Computed Tomography (PET/CT) unit to operate three (3) days per week at Lexington Medical Center – Lexington.

Lexington Medical Center - Lexington

Lexington, South Carolina

Project Cost: \$1,305,000

### Affecting Richland County

Replacement of three (3) Linear Accelerator units at Palmetto Health Richland with the subsequent relocation of two (2) of the aforementioned replacement units to Radiation Oncology, LLC d/b/a South Carolina Oncology Associates.

Radiation Oncology Associates, LLC

Columbia, South Carolina

Project Cost: \$9,968,511

### Affecting Spartanburg County

Renovation for the addition of an interventional radiation suite with a Digital Imaging System.

Mary Black Memorial Hospital

Spartanburg, South Carolina

Project Cost: \$3,735,000

### Affecting York County

Relocation of twenty (20) existing psychiatric beds to a new psychiatric pavilion located on the hospital campus with the addition of thirty (30) crisis stabilization beds resulting in a total of fifty (50) psychiatric beds.

Piedmont Medical Center

Rock Hill, South Carolina

Project Cost: \$8,586,116

In accordance with S.C. DHEC Regulation 61-15, the public and affected persons are hereby notified that the review cycle has begun for the following project(s) and a proposed decision will be made within 60 days beginning January 27, 2006. "Affected persons" have 30 days from the above date to submit comments or requests for a public hearing to Mr. Albert N. Whiteside, Director, Division of Planning and Certification of Need, 2600 Bull Street, Columbia, S.C. 29201. For further information call (803) 545-4200.

### Affecting Aiken County

Purchase of a sixty-four (64) slice Computed Tomography (CT) Scanner.

Aiken Cardiovascular Associates, PC

Aiken, South Carolina

Project Cost: \$1,772,075

## Affecting Charleston County

Construction of a freestanding diagnostic imaging center that will centralize outpatient services currently provided by Trident Medical Center including Magnetic Resonance Imaging (MRI), Computed Tomography (CT), X-ray, Ultrasound and Nuclear Medicine exams. The facility will also include a Positron Emission Tomography/Computed Tomography (PET/CT) scanner as a new service.

North Charleston Diagnostic Imaging Center, LLC

North Charleston, South Carolina

Project Cost: \$10,000,000

## Affecting Horry County

Addition of sixteen (16) inpatient psychiatric beds and eight (8) substance abuse beds for a total of forty-four (44) psychiatric beds and eight (8) substance abuse beds.

Lighthouse of Conway – Acute Care

Conway, South Carolina

Project Cost: \$1,200,471

## Affecting Lexington County

Renovation to replace a mobile Magnetic Resonance Imaging (MRI) unit with a fixed 1.5 Tesla MRI.

Lexington Medical Center – Lexington

Lexington, South Carolina

Project Cost: \$2,200,453

Replacement of the existing mobile Positron Emission Tomography (PET) unit operating three (3) days per week with a Mobile Positron Emission Tomography/Computed Tomography (PET/CT) unit to operate three (3) days per week at Lexington Medical Center - Lexington.

Lexington Medical Center - Lexington

Lexington, South Carolina

Project Cost: \$1,305,000

## Affecting Newberry County

Development of a freestanding oncology center that will offer radiation and medical oncology to patients and the purchase of a Linear Accelerator (6/10 MV) system and Eclipse IMX Treatment Planning System.

Newberry Oncology Associates, LLC

Newberry, South Carolina

Project Cost: \$2,397,076

## Affecting Spartanburg County

Establishment of an outpatient diagnostic imaging center to include the purchase of a 16-slice Computed Tomography (CT) Scanner and the upgrade and relocation of a 1.5T Magnetic Resonance Imaging (MRI) Scanner to be located on the first floor of the Steadman Hawkins Clinic of the Carolinas.

Mary Black Memorial Hospital

Spartanburg, South Carolina

Project Cost: \$5,919,470

## 6 NOTICES

Affecting York County

Replacement of the existing mobile Positron Emission Tomography (PET) unit operating two (2) days per week with a mobile Positron Emission Tomography/Computerized Tomography (PET/CT) unit to operate two (2) days per week.

Piedmont Medical Center

Rock Hill, South Carolina

Project Cost: \$465,000

### **DEPARTMENT OF LABOR, LICENSING AND REGULATION OFFICE OF STATE FIRE MARSHAL**

#### **NOTICE OF GENERAL PUBLIC INTEREST**

Notice is hereby given that, in accordance with Section 1-34-30 of the 1976 Code of Laws of South Carolina, as amended, the Department of Labor, Licensing and Regulation, Office of State Fire Marshal hereby adopts the latest edition of the following nationally recognized code.

1. National Fire Protection Association 54, National Fuel Gas Code, 2006 Edition
2. The original promulgating authority for this code is:  
National Fire Protection Association  
1 Batterymarch Park  
Quincy, Massachusetts 02269
3. This code is referenced by:  
South Carolina Code of Laws Section 40-82-70

The Office of State Fire Marshal specifically requested comments concerning sections of these editions that may be unsuitable for enforcement in South Carolina and received none. Therefore, the Office of State Fire Marshal hereby promulgates this latest edition without amendment.

### **DEPARTMENT OF LABOR, LICENSING AND REGULATION OFFICE OF STATE FIRE MARSHAL**

#### **NOTICE OF GENERAL PUBLIC INTEREST**

Notice is hereby given that, in accordance with Section 1-34-30 of the 1976 Code of Laws of South Carolina, as amended, the Department of Labor, Licensing and Regulation, Office of State Fire Marshal hereby adopts the latest edition of the following nationally recognized code.

1. National Fire Protection Association 101, Life Safety Code, 2006 Edition
2. The original promulgating authority for this code is:  
National Fire Protection Association  
1 Batterymarch Park  
Quincy, Massachusetts 02269

3. The code is referenced by:

South Carolina Code of Laws, Section 23-45-140  
 South Carolina Rules and Regulations 71-8300.11(D)(2)(d)  
 South Carolina Rules and Regulations 71-8300.11(E)(6)(b)(l)  
 South Carolina Rules and Regulations 71-8300.11(E)(7)(b)(l)  
 South Carolina Rules and Regulations 71-8300.11(F)(1)(c)  
 South Carolina Rules and Regulations 71-8300.12(B)

The Office of State Fire Marshal specifically requested comments concerning sections of these editions that may be unsuitable for enforcement in South Carolina and received none. Therefore, the Office of State Fire Marshal hereby promulgates this latest edition without amendment.

**DEPARTMENT OF LABOR, LICENSING AND REGULATION  
 OFFICE OF STATE FIRE MARSHAL**

**NOTICE OF GENERAL PUBLIC INTEREST**

Notice is hereby given that, in accordance with Section 1-34-30 of the 1976 Code of Laws of South Carolina, as amended, the Department of Labor, Licensing and Regulation, Office of State Fire Marshal hereby adopts the latest edition of the following nationally recognized code.

1. National Fire Protection Association 495, Explosive Materials Code, 2006 Edition
2. The original promulgating authority for this code is:  
 National Fire Protection Association  
 1 Batterymarch Park  
 Quincy, Massachusetts 02269
3. This code is referenced by:  
 South Carolina Rules and Regulations 71-8302 (A)

The Office of State Fire Marshal specifically requested comments concerning sections of these editions that may be unsuitable for enforcement in South Carolina and received none. Therefore, the Office of State Fire Marshal hereby promulgates this latest edition without amendment.

**DEPARTMENT OF LABOR, LICENSING AND REGULATION  
 OFFICE OF STATE FIRE MARSHAL**

**NOTICE OF GENERAL PUBLIC INTEREST**

Notice is hereby given that, in accordance with Section 1-34-30 of the 1976 Code of Laws of South Carolina, as amended, the Department of Labor, Licensing and Regulation, Office of State Fire Marshal hereby adopts the latest edition of the following nationally recognized code.

1. National Fire Protection Association 1126, Standard for the Use of Pyrotechnics before a Proximate Audience, 2006 Edition

## 8 NOTICES

2. The original promulgating authority for this code is:  
National Fire Protection Association  
1 Batterymarch Park  
Quincy, Massachusetts 02269
3. This code is referenced by:  
South Carolina Code of Laws, Section 23-35-45

The Office of State Fire Marshal specifically requested comments concerning sections of these editions that may be unsuitable for enforcement in South Carolina and received none. Therefore, the Office of State Fire Marshal hereby promulgates this latest edition without amendment.

**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**  
**CHAPTER 61**

Statutory Authority: 1976 Code Section 44-56-30

**R.61-79 HAZARDOUS WASTE MANAGEMENT REGULATIONS**

**Notice of Drafting:**

The Department of Health and Environmental Control proposes to amend R.61-79, Hazardous Waste Management Regulations, to adopt federal amendments through August 31, 2005. The Department is considering, in addition to the amendments published between July 1, 2004, and June 30, 2005, to include the August 5, 2005, modification of the Universal Waste program to include mercury containing equipment and the August 31, 2005, exclusion of certain total concentration limits in BMW Manufacturing Company, LLC, wastewater treatment sludge covered by its current conditional exclusion, as granted to other automobile manufacturers for their F019 waste. Interested persons are invited to present their views in writing to David Scaturo, Manager of Corrective Action Engineering, Division of Waste Management, Bureau of Land and Waste Management, Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201. To be considered, comments must be received by 5:00 p.m. on Monday February 28, 2006, the close of the drafting comment period.

**Synopsis:**

The United States Environmental Protection Agency (USEPA) promulgates amendments to 40 CFR 124, 260 through 266, 268, 270, and 273 throughout each calendar year. Recent federal amendments affect certain wastewater dyes, the new Hazardous Waste Management Manifest Rule, and testing and monitoring related to combustors and a correction to each of these three initial federal rules. The Department is considering, in addition to the amendments published between July 1, 2004, and June 30, 2005, to include the August 5, 2005, modification of the Universal Waste program to include mercury containing equipment and the August 31, 2005, exclusion of certain total concentration limits in BMW Manufacturing Company, LLC, wastewater treatment sludge covered by its current conditional exclusion, as granted to other automobile manufacturers for their F019 waste. These rules have been published in the Federal Register between July 1, 2004, and August 31, 2005, at 70 FR 9138 on February 24, 2005; 70 FR 10776 on March 4, 2005; 70 FR 34538 on June 14, 2005; 70 FR 35034 and FR 35032 on June 16, 2005; 70 FR 44150 on August 1, 2005; 70 FR 45508 on August 5, 2005; and 70 FR 51638 on August 31, 2005. In addition, several minor corrections will be made to conform to the intent of prior federal amendments.

The Department intends to amend R.61-79 to maintain conformity with federal requirements and ensure compliance with federal standards. Legislative review of this amendment will not be required.

**PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA**  
**CHAPTER 103**

Statutory Authority: S.C. Code Ann. Section 58-3-140 (Supp. 2005)

**Notice of Drafting:**

The Public Service Commission of South Carolina proposes to amend 26 S.C. Code Ann. Regs. 103-500, *et. seq.* (1976 & Supp. 2005) and 26 S.C. Code Ann. Regs. 103-700, *et. seq.* (1976 & Supp. 2005) governing wastewater and water utilities in order to conform these regulations to 2004 S.C. Acts No. 175. Interested persons may submit comments to the Public Service Commission, Docketing Department, 101 Executive Center Drive, Columbia, South Carolina 29210. Please reference Docket Number 2006-9-W/S. To be considered, comments must be received no later than 4:45 p.m. on February 28, 2006.

## 10 DRAFTING

### Synopsis:

In 2004, the General Assembly passed Act No. 175 which restructured the Public Service Commission. This Act modified the structure of the Agency and its functions and created the Office of Regulatory Staff. Several duties of the Public Service Commission were transferred to the Office of Regulatory Staff on January 1, 2005. The purpose of the revisions to 26 S.C. Code Ann. Regs. 103-500, *et. seq.* (1976 & Supp. 2005) and 26 S.C. Code Ann. Regs. 103-700 *et. seq.* (1976 & Supp. 2005) of the Public Service Commission's regulations is to amend Articles 5 and 7 to conform to the new standards set out by Act 175 of 2004.

Legislative review of this proposal will be required.

Document No. 3056  
**STATE BOARD OF EDUCATION**  
 Chapter 43

Statutory Authority: S.C. Code Ann. § 59-5-60(1)(2004), § 59-18-310 (2004), § 59-18-320 (2004), § 59-18-330 (2004), § 59-18-340 (2004), § 59-20-60(7)(c)(2004), and § 59-30-10 (2004)

43-262.4. End-of-Course Tests

**Preamble:**

The notice of drafting was published in the *State Register* on June 24, 2005.

Section-by-Section Discussion

Section I(A)(3) Remove the end-of-course requirement for Biology/Applied Biology 2

**Notice of Public Hearing and Opportunity for Public Comment:**

Interested members of the public and regulated community are invited to make oral or written comments on the proposed regulation at a public hearing to be conducted by the State Board of Education at its meeting on March 8, 2006, at 10:00 a.m. at the Rutledge Building, State Department of Education, Columbia, South Carolina. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes or less and as a courtesy are asked to provide written copies of their presentation for the record.

Interested persons are also provided an opportunity to submit written comments on the proposed amendments by writing to Dr. Theresa Siskind, Director, Office of Assessment, State Department of Education, 1429 Senate Street, Rutledge Building, Room 607, Columbia, South Carolina 29204. To be considered, all comments must be received no later than 5:00 p.m. on February 27, 2006.

**Preliminary Fiscal Impact Statement:** Reduction in costs for development, administration, and scoring of HSAP science; reduction in costs for revisions to biology test, administration, and scoring. Initial savings would include development costs estimated to be \$2 million. Recurring savings for administration and scoring are estimated to be \$1 million per year.

**Statement of Need and Reasonableness:** The Testing Task Force recommended a reduction in the amount of testing. One way to accomplish reduction was to suggest an amendment to the Education Accountability Act of 1998 to replace requirements for science and social studies exit examinations with requirements for students to pass courses in Physical Science and United States History, for which there are end-of-course tests. Pre-filed legislation includes this amendment. Simultaneously, the U.S. Department of Education approved the use of the Physical Science examination to meet NCLB requirements for high school testing, pending peer review. If the Department's petition to the federal government is approved and the EAA is amended, the Biology 1/Applied Biology end-of-course test requirement could be removed. These actions would result in elimination of three tests (HSAP Science, HSAP Social Studies, EOCEP Biology 1/Applied Biology 2) and the costs that would be associated with their development, production, and administration.

DESCRIPTION OF REGULATION: 43-262.4, End-of-Course Tests

Purpose: Regulation 43-262.4, End-of-Course Tests, defines gateway and benchmark courses for which end-of-course tests must be developed, establishes the purposes and uses of the tests, provides for the establishment of standards for the tests, and provides for notice to students. The Education Accountability Act of 1998 requires these courses in the areas of English/language arts, mathematics, science, and social studies. Defining the terms

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and establishing the purposes of the tests must be accomplished before the test development or selection process can proceed.

Legal Authority: The legal authority for Regulation 43-262.4 is S.C. Code Ann. Sections 59-5-60 (1990), 59-18-300 (Supp. 1999), 59-18-310(B) (Supp. 1999), and 59-18-320(C) (Supp. 1999).

Plans for Implementation: The proposed regulation would take effect upon approval by the General Assembly and publication in the *State Register*. The proposed regulation will be implemented by providing school district personnel with copies.

**DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:** Regulation 43-262.4 will define gateway and benchmark courses for which end-of-course tests must be developed, establish the purposes and uses of the tests, provide for the establishment of standards for the tests, and provide for notice to students.

**DETERMINATION OF COSTS AND BENEFITS:** Reduction in costs for development, administration, and scoring of HSAP science; reduction in costs for revisions to biology test, administration, and scoring. Initial savings would include development costs estimated to be \$2 million. Recurring savings for administration and scoring are estimated to be \$1 million per year.

**UNCERTAINTIES OF ESTIMATES:** N/A

**EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:** N/A

**DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:** There will be no detrimental effects on the environment and public health if this regulation is not implemented.

**Statement of Rational:** A copy of the Statement of Rational can be obtained from the Office of Assessment, Division of Curriculum Services and Assessment, State Department of Education, 1429 Senate Street, Rutledge Building, Room 607, Columbia, S.C. 29201 or e-mail [tsiskind@sde.stae.sc.us](mailto:tsiskind@sde.stae.sc.us)

### **Text:**

The full text of this regulation is available on the South Carolina General Assembly Home Page: <http://www.scstatehouse.net/regnsrch.htm>. Full text may also be obtained from the promulgating agency.

Document No. 3055

### **DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

#### **CHAPTER 61**

Statutory Authority: 44-55-2310 *et seq.*

### **Preamble:**

The Department is proposing to amend R.61-51, *Public Swimming Pools*, to clarify certain portions of the regulation, provide for enhanced flexibility and safety and to modify requirements for barriers on adjacent elevated structures. See Statement of Need and Reasonableness and Rationale herein and the Discussion below.

A Notice of Drafting for the proposed revisions of R.61-51 was published in the September 2005 State Register.

## Section-by-Section Discussion

### Section A.5

Delete definition of Certified Pool Operator. Replace with “Reserved.”

### Section A. 13.

Modify the definition of “Elevated Structure” to provide clarity.

### Section B. 11

Add a definition of “Permit Terms” to provide for permit extensions.

### Section C. 4.

This change allows for a more limited use of the “five-foot barrier” for adjacent “elevated structures.”

### Section C. 6 (a)(iv)

This change requires that large “spas”, meet the decking requirements similar to conventional pools.

### Section C. 6 (g)

This section limits the number of rinse showers needed at a pool and requires that the location of such showers be near the entrances to the pool area.

### Section C. 7

This section allows for flexibility in use of depth markers – allowing the tile background to be something other than white (as long as there continues to be adequate contrast with the lettering).

### Section C. 8(a)(b)

This section specifies a minimum height of the latch to make the requirement meaningful and safer.

### Section C.19

Allows for the use of solar heaters.

### Section C.23.

Provides for alternative control devices.

### Section C.28.

Delete terms “Certified” and replace “certification” with “license.”

### Section D. 2(d)

Clarifies that ground fault protection devices should be used for all relevant pool areas.

### Section J.17(b)

Delete term “certified.”

### Section J.18.

Delete terms “Certified” and “CPO” from title.

### Section J.18 (b)

Delete term “certified” and replace “CPO” with “pool operator.”

### Section K.1(a) (xiii)

Delete term “Certified.”

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Section K.1(a) (xv)

Replace term “certified” with “properly licensed.”

### **Notice of Staff Informational Forum:**

Staff of the S.C. Department of Health and Environmental Control (SCDHEC) invite interested members of the public and regulated community to attend a staff-conducted informational forum to be held on March 1, 2006 at 2:00 p.m. in Room 4380 at SCDHEC, 2600 Bull St., Columbia, SC. The purpose of the forum is to answer questions, clarify issues and receive formal comments from interested persons on the proposed amendments of R.61-51. Comments received at the forum and no later than March 6, 2006 shall be considered by staff in formulating the final draft proposal for submission to the Board of Health and Environmental Control for the Board public hearing scheduled pursuant to S.C. Code Section 1-23-110 and –111 as noticed below.

### **Notice of Board Public Hearing and Opportunity for Public Comment Pursuant to S.C. Code Sections 1-23-110 and 1-23-111:**

Interested members of the public and regulated community are invited to make oral or written comments on the proposed amendment at a public hearing to be conducted by the Board of Health and Environmental Control at its regularly-scheduled meeting on April 13, 2006. The public hearing will be held in the Board Room of the Commissioner's Suite, third Floor, Aycock Building of the SCDHEC at 2600 Bull St., Columbia, S.C. The Board meeting commences at 10:00 a.m. at which time the Board will consider items on its agenda in the order presented. The Department will publish the Board's agenda 24 hours in advance of the meeting. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes and, as a courtesy, are asked to provide written comments of their presentations for the record.

Interested persons are also provided an opportunity to submit written comments on the proposed regulation by writing to Jeff deBessonnet, S.C. DHEC, 2600 Bull St., Columbia, S.C. 29201. Written comments must be received no later than 4:00p.m., March 6, 2006. Comments received by the deadline date shall be considered by staff in formulating the final proposed regulation for public hearing on April 13, 2006, as noticed above. Comments received by the deadline date shall be submitted in a Summary of Public Comments and Department Responses for the Board's consideration at the public hearing.

Copies of the proposed regulation for public notice and comment may be obtained by contacting Mr. deBessonnet at the above address.

### **Preliminary Fiscal Impact Statement:**

These changes are not anticipated to change costs to the Department.

### **Statement of Need and Reasonableness:**

This statement was determined by staff analysis pursuant to S.C. Code Section 1-23-115(C)(1)-(3) and (9)-(11):

**DESCRIPTION OF REGULATION:** R.61-51, *Public Swimming Pools*

*Purpose:* The Department is proposing to amend R.61-51 to provide needed clarification to the regulation and to improve safety requirements contained in the regulation.

*Legal Authority:* S.C. Code Sections 44-55-2310

*Plan for Implementation:* Upon approval by the Board of Health and Environmental Control, the General Assembly and publication in the State Register, the Department will implement the regulation changes as with other regulations.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFIT:

The changes proposed will help expedite permitting of new pools by providing greater flexibility for use of new equipment and design approaches. A provision is added to allow for permit extensions. As well, changes will enhance safety at public swimming pool. Regarding the design of barriers at adjacent elevated structures, the change will decrease the need for five-foot barriers for tall buildings. This set of changes will reduce the number of rinse showers needed for larger pools, while specifying that the location of the needed rinse showers be near the entry points to a pool area.

DETERMINATION OF COSTS AND BENEFITS:

These changes are the most efficient means for allocating public and private resources because clarification is needed to insure a streamlined permitting process and to avoid wasteful construction activities (i.e., activities that occur, but don't comply with the regulation). As well, added flexibility will allow for the use of newer technologies and equipment. One change will allow for a permit to be extended (in lieu of a new application if the construction of a project is delayed).

UNCERTAINTIES OF ESTIMATES:

While a specific monetary benefit can not be estimated, a reduction in the burden for obtaining permits and approvals to operate will be of value to the "pool" industry.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

Public health will be enhanced by improved safety requirements detailed in these changes.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

If the regulation is not revised, construction of adjacent elevated structures will be unnecessarily more expensive. Clarity of the regulation, which is provided in several areas, will help insure pools are built properly, thereby enhancing public health and safety around public swimming pools. Clarity of the regulation will assist small businesses obtain permits in a more efficient process. Public health (safety) will be enhanced by the changes that improve safety at pools.

STATEMENT OF RATIONALE (in accordance with S.C. Code Section 1-23-120:

The basis for these minor changes to the pool regulation is to provide clarity and flexibility in the design of public pools.

**Text of Proposed Amendment:**

The full text of this regulation is available on the South Carolina General Assembly Home Page: <http://www.scstatehouse.net/regnsrch.htm>. Full text may also be obtained from the promulgating agency.

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Document No. 3052  
**PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA**  
CHAPTER 103  
Statutory Authority: 1976 Code Section 58-3-140

26 S.C. Code Ann. Regs. 103-600, *et. seq.* (1976 & Supp. 2005) Telecommunications Utilities

### Preamble:

In 2004, the General Assembly passed Act. No. 175 which restructured the Public Service Commission. This Act modified the structure of the Agency and its functions and created the Office of Regulatory Staff. Several duties of the Public Service Commission were transferred to the Office of Regulatory Staff on January 1, 2005. The purpose of the revisions to 26 S.C. Code Ann. Regs. 103-600, *et. seq.* (1976 & Supp. 2005) of the Public Service Commission's regulations is to amend Article 6 to conform to the new standards set out by Act 175 of 2004. Additionally, the proposed changes to Article 6 provide clarification as to the coverage of regulations and conform regulations to existing practices.

### Section-by-Section Discussion

This Section provides clarification as to coverage of the regulation.

- |            |                                                                                                                                                                           |
|------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 103-601    | This Section modifies the standard for waiver of regulations by providing for more flexibility.                                                                           |
| 103-602.3  | This Section was formerly titled "Utility." This Section is now titled "Customer."                                                                                        |
| 103-602.4  | This Section was formerly titled "Customer." This Section is now titled "Interexchange Carrier."                                                                          |
| 103-602.5  | This Section was formerly titled "Reference." This Section is now titled "ORS."                                                                                           |
| 103-602.6  | This Section was formerly titled "Standard Network Interface." This Section is now titled "PSP."                                                                          |
| 103-602.7  | This Section was formerly titled "Interexchange Carrier." This Section is now titled "Radio Common and Cellular Carrier."                                                 |
| 103-602.8  | This Section was formerly titled "COCOT." This Section is now titled "Reference."                                                                                         |
| 103-602.9  | This Section was formerly titled "Radio Common and Cellular Carrier." This Section is now titled "Standard Network Interface Device."                                     |
| 103-602.10 | This Section was formerly titled "900 Numbers." This Section is now titled "Telephone Utility."                                                                           |
| 103-602.11 | This Section was formerly titled "Information Provider." This Section is now titled "Written or in Writing."                                                              |
| 103-603    | This Section is modified to conform regulations to recognize changes in state law and to make other clerical changes.                                                     |
| 103-604    | This Section provides clarification as to coverage of the regulation and recognizes existing practice of the commission.                                                  |
| 103-605    | This Section provides clarification as to the coverage of the regulation and sets a policy with regard to the provision of information to the Office of Regulatory Staff. |
| 103-606    | This Section provides clarification as to the existing practice of the commission.                                                                                        |
| 103-610    | This Section conforms the regulation to provisions of Act No. 175 of 2004.                                                                                                |
| 103-611    | This Section provides clarification as to the coverage of the regulation.                                                                                                 |
| 103-612    | This Section is modified to conform to the provisions of Act No. 175 of 2004. Additionally, this Section clarifies filing requirements.                                   |
| 103-613    | This Section is being deleted due to coverage in subsequent regulations.                                                                                                  |
| 103-614    | This Section clarifies filing requirements regarding interruption of service and conforms the regulation to the provisions of Act No. 175 of 2004.                        |
| 103-615    | This Section provides clarification as to the coverage of the regulation.                                                                                                 |
| 103-616    | This Section provides clarification as to the coverage of the regulation and conforms the regulations to provisions of Act No. 175 of 2004.                               |
| 103-616.1  | This Section is being deleted due to obsolescence.                                                                                                                        |

|           |                                                                                                                                                                                                                                                                                                |
|-----------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 103-616.2 | This Section is being deleted due to obsolescence.                                                                                                                                                                                                                                             |
| 103-617   | This Section provides clarification as to the coverage of the regulation.                                                                                                                                                                                                                      |
| 103-618   | This Section conforms the regulation with Act No. 175 of 2004 and deletes certain criteria from service reports.                                                                                                                                                                               |
| 103-619   | This Section is amended to conform to Act No. 175 of 2004.                                                                                                                                                                                                                                     |
| 103-620   | This Section is modified to conform to Act No. 175 of 2004 and modifies the methodology for transmitting information to the customer.                                                                                                                                                          |
| 103-621   | This Section modifies the existing criteria for the collection and refund of a deposit.                                                                                                                                                                                                        |
| 103-622   | This Section is modified to conform the customer bill form to the Federal Communication Commission's "Truth in Billing Requirements." Additionally, this Section clarifies applicability of late payment charges, disconnection and reconnection, payment by check, and deferred payment plan. |
| 103-623   | This Section provides clarification regarding the applicability of regulations governing adjustment of bills.                                                                                                                                                                                  |
| 103-624   | This Section provides clarification as to coverage of the regulation.                                                                                                                                                                                                                          |
| 103-625   | This Section provides clarification as to coverage of the regulation and reasons for denial or discontinuance of service.                                                                                                                                                                      |
| 103-626   | This Section is modified to eliminate interstate jurisdictional matters and provides clarification as to coverage of the regulation.                                                                                                                                                           |
| 103-627   | This Section is modified to provide clarification of the regulation.                                                                                                                                                                                                                           |
| 103-628   | This Section is modified to provide clarification regarding the processing and investigation of consumer complaints.                                                                                                                                                                           |
| 103-629   | This Section modifies the location of telephone utilities' tariffs and regulations.                                                                                                                                                                                                            |
| 103-630   | This Section is modified to provide clarification as to the coverage of the regulation.                                                                                                                                                                                                        |
| 103-631   | This Section is modified to allow telephone utilities to make provisions for the publication of customers' names, addresses, and telephone numbers in directories, conforms the Section to Act No. 175 of 2004, and provides clarification as to the coverage of the regulation.               |
| 103-632   | This Section is being deleted because it addresses a matter that is regulated by federal authority.                                                                                                                                                                                            |
| 103-640   | This Section is modified to provide clarification of the regulation.                                                                                                                                                                                                                           |
| 103-641   | This Section is modified to provide clarification of the regulation.                                                                                                                                                                                                                           |
| 103-642   | This Section is modified to update the acceptable reference for telephone dictionaries.                                                                                                                                                                                                        |
| 103-643   | This Section is modified to provide clarification of the scope of the regulation.                                                                                                                                                                                                              |
| 103-644   | This Section is modified to provide clarification of the scope of the regulation.                                                                                                                                                                                                              |
| 103-645   | This Section is modified to provide clarification as to the scope of the regulation.                                                                                                                                                                                                           |
| 103-646   | This Section is modified to provide clarification as to the scope of the regulation.                                                                                                                                                                                                           |
| 103-650   | This Section is modified to provide clarification as to the scope of the regulation.                                                                                                                                                                                                           |
| 103-651   | This Section is modified to provide clarification as to the scope of the regulation and is conformed to comply with Act No. 175 of 2004.                                                                                                                                                       |
| 103-652   | This Section is modified to provide clarification as to the scope of the regulation and is conformed to comply with Act No. 175 of 2004.                                                                                                                                                       |
| 103-653   | This Section is modified to provide clarification as to the scope of the regulation, replaces the word "complaints" with "trouble reports" and the word "complaint" with "trouble" and is conformed to comply with Act No. 175 of 2004.                                                        |
| 103-661   | This Section is modified to eliminate duplicative language and provides clarification as to the scope of the regulation.                                                                                                                                                                       |
| 103-662   | This Section is modified to provide clarification regarding the scope of the regulation.                                                                                                                                                                                                       |
| 103-663   | This Section is modified to provide clarification regarding the scope of the regulation and is modified to conform to Act No. 175 of 2004.                                                                                                                                                     |
| 103-670   | This Section is modified to conform to Act No. 175 of 2004.                                                                                                                                                                                                                                    |
| 103-671   | This Section provides clarification as to the scope of the regulation.                                                                                                                                                                                                                         |
| 103-672   | This Section provides clarification as to the scope of the regulation.                                                                                                                                                                                                                         |
| 103-680   | This Section is modified to conform to Act No. 175 of 2004.                                                                                                                                                                                                                                    |
| 103-684   | This Section is modified to conform to Act No. 175 of 2004.                                                                                                                                                                                                                                    |

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### Notice of Public Hearing and Opportunity for Public Comment:

Interested persons may submit written comments to the Public Service Commission, Docketing Department, 101 Executive Center Drive, Columbia, South Carolina 29210. Please reference Docket Number 2005-347-C. To be considered, comments must be received no later than 4:45 p.m. on February 28, 2006. Interested members of the public and the regulated community are invited to make oral or written comments on the proposed regulation at a public hearing to be conducted by the Public Service Commission on **March 2, 2006, at 11:00 a.m.** in the Commission's Hearing Room, 101 Executive Center Drive, Columbia, South Carolina 29210.

### Preliminary Fiscal Impact Statement:

There will be no increased costs to the State or its political subdivisions.

### Statement of Need and Reasonableness:

This statement of need and reasonableness was determined pursuant to S.C. Code Ann. Section 1-23-115(C)(1) through (3) and (9) through (11).

DESCRIPTION OF REGULATION: 26 S.C. Code Ann. Regs. 103-600, *et. seq.*

Purpose: 2004 S.C. Acts No. 175 modified the structure of the Public Service Commission and its functions and created the Office of Regulatory Staff. Several duties of the Commission Staff were transferred to the Office of Regulatory Staff on January 1, 2005. The purpose of the revisions to 26 S.C. Code Ann. Regs. 103-600, *et. seq.* (1976 & Supp. 2005) is to amend Article 6 to conform to the new standards set out by Act 175 of 2004.

Legal Authority: S.C. Code Ann. Section 58-3-140 (Supp. 2005)

Plan for Implementation: The proposed amendments will take effect upon approval by the General Assembly and publication in the *State Register*.

### DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

Due to the major restructuring of the Public Service Commission and its governing statutes, the Commission regulations should be consistent with the recent revisions in Title 58 of the South Carolina Code. Some of the proposed changes to the regulations conform the regulations to existing practices and provide clarification regarding the scope of Article 6 regulations.

### DETERMINATION OF COSTS AND BENEFITS:

Although costs related to amending Article 6 are minimal, the benefits include regulations that conform with Title 58 of the South Carolina Code.

### UNCERTAINTIES OF ESTIMATES:

None.

### EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

None.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

The amended regulations will have no detrimental effect on the environment and public health if the regulation is not implemented.

**Statement of Rationale:**

The purpose of the revisions to 26 S.C. Code Ann. Regs. 103-600, *et. seq.* is to conform the Public Service Commission's telephone utilities regulations with Act No. 175 of 2004, and existing practices of the Commission and to provide clarification as to the scope of Article 6 regulations. There was no scientific or technical basis relied upon in the development of this regulation.

**Text:**

The full text of this regulation is available on the South Carolina General Assembly Home Page: <http://www.scstatehouse.net/regnsrch.htm>. Full text may also be obtained from the promulgating agency.

Document No. 3057  
**DEPARTMENT OF REVENUE**  
**CHAPTER 117**  
**Statutory Authority:** 1976 Code Section 12-4-320

**Preamble:**

The South Carolina Department of Revenue is considering amending SC Regulation 117-300.6 concerning retail licenses and partnerships. Presently, this regulation is out of date since this regulation references an annual license and the retail license is no longer issued on an annual basis. In addition, Federal law states that a partnership is terminated if there is a 50% change in ownership over a 12 month period; however, federal law states that the partnership does not need a new employer identification number ("EIN"). This proposed regulation would not require a new retail license in such cases (similar to the federal law that does not require a new EIN). The proposed regulation would also not require a new retail license with respect to certain conversions of partnerships to either limited liability partnerships or limited liability companies.

Discussion

The South Carolina Department of Revenue is considering amending SC Regulation 117-300.6 concerning retail licenses and partnerships. Presently, this regulation is out of date since this regulation references an annual license and the retail license is no longer issued on an annual basis. In addition, Federal law states that a partnership is terminated if there is a 50% change in ownership over a 12 month period; however, federal law states that the partnership does not need a new employer identification number ("EIN"). This proposed regulation would not require a new retail license in such cases (similar to the federal law that does not require a new EIN). The proposed regulation would also not require a new retail license with respect to certain conversions of partnerships to either limited liability partnerships or limited liability companies.

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### **Text:**

The full text of this regulation is available on the South Carolina General Assembly Home Page: <http://www.scstatehouse.net/regnsrch.htm>. Full text may also be obtained from the promulgating agency.

### **Notice of Public Hearing:**

The S.C. Department of Revenue has scheduled a public hearing before the Administrative Law Court in the Edgar Brown Building (Suite 224) on the Capitol Complex (1205 Pendleton Street) in Columbia, South Carolina for March 21, 2006 at 10:00 a.m. if the requests for a hearing meet the requirements of Code Section 1-23-110(A)(3). The public hearing, if held, will address a proposal by the Department to amend SC Regulation 117-300.6 concerning retail licenses and partnerships. Presently, this regulation is out of date since this regulation references an annual license and the retail license is no longer issued on an annual basis. In addition, Federal law states that a partnership is terminated if there is a 50% change in ownership over a 12 month period; however, federal law states that the partnership does not need a new employer identification number ("EIN"). This proposed regulation would not require a new retail license in such cases (similar to the federal law that does not require a new EIN). The proposed regulation would also not require a new retail license with respect to certain conversions of partnerships to either limited liability partnerships or limited liability companies.

The department will be asking the Administrative Law Court, in accordance with S.C. Code Ann. Section 1-23-111 (2005), to issue a report that the proposal to amend the regulation is needed and reasonable.

### **Comments:**

All comments concerning this proposal should be mailed to the following address by February 27, 2006:

S.C. Department of Revenue  
Legislative Services - Mr. Meredith Cleland  
P.O. Box 125  
Columbia, South Carolina 29214

### **Preliminary Fiscal Impact Statement:**

There will be no impact on state or local political subdivisions expenditures in complying with this proposed legislation.

### **Summary of the Preliminary Assessment Report:**

A preliminary assessment report is not required for this proposal.

### **Preliminary Assessment Report:**

A preliminary assessment report is not required for this proposal.

### **Statement of Rationale:**

The purpose of this proposal is to amend SC Regulation 117-300.6 concerning retail licenses and partnerships. Presently, this regulation is out of date since this regulation references an annual license and the retail license is no longer issued on an annual basis. In addition, Federal law states that a partnership is terminated if there is a 50% change in ownership over a 12 month period; however, federal law states that the partnership does not need a new employer identification number ("EIN"). This proposed regulation would not require a new retail license in such cases (similar to the federal law that does not require a new EIN). The proposed regulation would also not require a new retail license with respect to certain conversions of partnerships to either limited liability

partnerships or limited liability companies. The proposal to amend this regulation is needed to reduce any taxpayer confusion that may result from having a published regulation that is in conflict with the law. The proposal to amend this regulation is also reasonable in that it is the department's responsibility to maintain regulations that are up-to date and consistent with the law and the advent of new entities such as limited liability companies and the laws that address such entities.

**Statement of Need and Reasonableness:**

The proposal to amend this regulation is needed to reduce any taxpayer confusion that may result from having a published regulation that is in conflict with the law. The proposal to amend this regulation is also reasonable in that it is the department's responsibility to maintain regulations that are up-to date and consistent with the law and the advent of new entities such as limited liability companies and the laws that address such entities.

## 22 EMERGENCY REGULATIONS

Filed: January 3, 2006, 12:26 pm

Document No. 3050  
**OFFICE OF THE ATTORNEY GENERAL**  
CHAPTER 13  
Statutory Authority: S.C. Code Sections 35-1-101 et seq.

### Emergency Situation:

The Securities Commissioner has found that an emergency situation exists requiring promulgation of regulations to provide specific guidelines to the securities industry concerning the recognized exemptions from registration for securities and personnel; the information, forms and fees required for notice filing or registering securities and persons; bonding and recordkeeping requirements; examinations; advertising filing requirements; various filing fees; consents to service of process; and similar topics.

### Text of Emergency Regulations:

| <u>Securities Regulations</u>                                                                                                        | Beginning Regulation |        |
|--------------------------------------------------------------------------------------------------------------------------------------|----------------------|--------|
| Article 1. General Provisions .....                                                                                                  |                      | 13.101 |
| 2. Exemptions from Securities Registration Requirements .....                                                                        |                      | 13.201 |
| 3. Registration of Securities and Notice Filing of Federal Covered Securities .....                                                  |                      | 13.301 |
| 4. Broker-Dealers, Agents, Investment Advisers, Investment Adviser Representatives, and<br>Federal Covered Investment Advisers ..... |                      | 13.401 |
| 5. Fraud and Liabilities .....                                                                                                       |                      | 13.501 |
| 6. Administration and Judicial Review .....                                                                                          |                      | 13.601 |
| 7. Transition and Fee Provisions .....                                                                                               |                      | 13.701 |

#### ARTICLE 1

#### GENERAL PROVISIONS

#### ARTICLE 2

#### EXEMPTIONS FROM SECURITIES

REG.

- 13-201. Approved Securities Exchanges.
- 13-202. Securities of Nonprofit Organizations.
- 13-203. Recognized Securities Manuals.
- 13-204. Regulation D Offerings.
- 13-205. Accredited Investor Exemption.

### 13-201. Approved Securities Exchanges

The following securities markets are recognized under the provisions of Section 35-1-201(6) of the South Carolina Uniform Securities Act of 2005: the New York Stock Exchange (NYSE); American Stock Exchange (ASE); Midwest Stock Exchange; NASDAQ/National Market System; Philadelphia Stock Exchange; Pacific Stock Exchange; Chicago Board Options Exchange (CBOE).

### 13-202. Securities of Nonprofit Organizations

The exemption from the registration requirements of Section 35-1-301 provided by Section 35-1-201(7) for nonprofit organizations shall not be considered to be available for debt securities issued and offered by such

organizations unless the full disclosure provisions of Section 35-1-501(2) are met and the investing public is afforded the protection provided by the following as a minimum:

- (1) The organization shall be incorporated as a nonprofit, nonstock corporation.
- (2) Any organization assisting the issuer in any manner in the sale of the securities shall be required to be registered as a broker-dealer in this State.
- (3) The trustee and/or paying agent shall be independent of the issuer, the broker-dealer or any affiliate of either, and shall possess the authority to administer a trust under state and/or federal laws.
- (4) The debt securities shall meet all form and minimum provisions for debt securities established pursuant to rule or order of the Securities Commissioner.
- (5) A Prospectus, Offering Brochure, Offering Circular or similar instrument, dated and filed with the Securities Commissioner, shall be delivered to each prospective purchaser and a copy of such instrument (signed by two officers of the issuer) shall be held in the files of the trustee and/or paying agent.
- (6) Said Prospectus or similar instrument shall at a minimum contain the following information:
  - (a) Financial statement consisting of a statement of assets and liabilities, income and expense statement, and comparative figures showing the budget, number of pledging units, if available, and income and expenses for the past three years. If any of this information is not available, a statement to that effect should be made with an explanation of why it is not available. Obligations, if any, on existing indebtedness should be clearly stated;
  - (b) A pay-back or maturity schedule and sinking fund requirements, if any. If refinancing will be needed when the bonds mature, this should be clearly stated;
  - (c) The name, address and telephone number of the trustee and/or paying agent;
  - (d) Any past history of financial transactions between the issuer and broker-dealer or financing organization and any known or contemplated future transactions;
  - (e) The name, address and telephone number of the broker-dealer handling the issue and the name and address of the local representative of the broker-dealer;
  - (f) The total expenses of the issue (including remuneration to the broker-dealer);
  - (g) A statement on whether the offering is being made on a best efforts or firm underwriting basis, and if the former, a clear statement of the responsibilities of the financing organization and the church membership;
  - (h) An itemized statement of the use to which the proceeds will be put. If additional funds will be needed to complete the stated purposes, this should be disclosed together with a statement showing how such funds will be obtained;
  - (i) If any statements are made concerning the risk or lack of risk in purchasing the securities, they should be made in the light of the financial condition of the issuer, and not in generalities. Likewise, any comparison of yields will be considered misleading unless other comparative aspects of these investments are included;
  - (j) A description of the terms of the debt security offered. For details reference may be made to an indenture and/or deed of trust if such exists;
  - (k) If guarantee of payment is made by an affiliated organization, information describing the ability of that organization to guarantee should be furnished, including financials. The word "guarantee" should be used only if there is a second obligation by another entity;
  - (l) Brief information concerning the city, town or other area in which the issuer is located with special reference to the immediate neighborhood;
  - (m) Clear disclosure of any affiliation of the issuer or broker-dealer, or of any officers of either, with any building contractor or supplier who has an interest in or may receive any of the proceeds of the issue; and
  - (n) If the securities have not been registered under the South Carolina Uniform Securities Act of 2005, the Securities Act of 1933 or the securities law of the state in which the issuer is located, this should be clearly indicated, and the exemptions relied upon cited.
- (7) Before reliance is placed upon the exemption provided by Section 35-1-201(7), written clearance by the Securities Commissioner must be obtained. A request for such should be accompanied by the following:
  - (a) A copy of the latest preliminary or definitive Prospectus, Offering Brochure or other offering document. If preliminary, a copy of the definitive instrument should be filed when available;
  - (b) A draft or specimen of the security;
  - (c) A copy of the preliminary or definitive indenture and/or trust agreement, if any;
  - (d) A copy of the Agreement between the issuer and broker-dealer;
  - (e) An Opinion of Counsel as to the legality of the issue and obligation of the issuer;

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- (f) Copies of all advertising materials and related literature to be used in the offer or sale of the security; and
- (g) A filing fee in the amount of one hundred fifty (\$150.00) dollars.

### 13-203. Recognized Securities Manuals.

The following securities manuals are recognized under the provisions of Section 35-1-202(2)(D) of the South Carolina Uniform Securities Act of 2005 and the inclusion in any one of these manuals of the information specified in this Section concerning the issuer of the security, exempts such security from the requirements of Sections 35-1-301 through 35-1-306 and 35-1-504 of the South Carolina Uniform Securities Act of 2005: Standard & Poor's Corporation Records; Mergent's Manuals.

### 13-204. Regulation D Offerings.

Any offer or sale of securities made in compliance with Rules 501 through 505 and 507 through 508 of Regulation D (collectively "SEC Regulation D") under the Securities Act of 1933, as amended from time to time (except for any subsequent amendment to SEC Regulation D which the Securities Commissioner, by Rule or Order, specifically excludes) and which satisfies the following additional conditions and limitations, shall be exempt from Sections 35-1-301 to 35-1-306 of the South Carolina Uniform Securities Act of 2005:

A. Commissions. No commissions, finders fees or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser unless such person is registered as a broker-dealer or agent as required by Section 35-1-401 of the South Carolina Uniform Securities Act of 2005.

B. Disqualifications. No exemption under this Rule shall be available for the securities of an issuer, if the issuer or any of its affiliates:

(1) is subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining or is subject to an order, judgment or decree of any court of competent jurisdiction, entered within five (5) years prior to commencement of the offering in reliance upon this exemption, permanently restraining or enjoining such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with any state; or

(2) has been convicted within five (5) years prior to the commencement of the offering in reliance upon this exemption of any felony or misdemeanor in connection with the purchase or sale of any security or any felony involving fraud or deceit including but not limited to forgery, embezzlement, obtaining money under false pretenses, theft by conversion, theft by deception, larceny or conspiracy to defraud; or

(3) is subject to any order, judgment or decree issued by any State Securities Administrator, the United States Securities and Exchange Commission, the United States Commodities Future Trading Commission or the United States Postal Service in which fraud, deceit or registration violations were found after notice and opportunity for hearing, if the order was entered within five (5) years prior to the commencement of the offering in reliance upon this exemption; or

(4) is subject to an order barring or suspending membership in any self-regulatory organization registered pursuant to the Securities Exchange Act of 1934, if the order was entered within five (5) years prior to the commencement of the offering in reliance upon this exemption.

C. Waiver of Disqualification. The disqualification referred to in Subsection B above shall not apply:

(1) if the issuer or its affiliate subject to the disqualification is currently registered or licensed to conduct securities-related business in the jurisdiction where the administrative order or judgment was entered against such issuer or affiliate; or

(2) if the jurisdiction which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied; or

(3) if the Securities Commissioner, in his discretion, waives the disqualification.

D. Filing requirements. The following filing requirements are conditions precedent to the availability of this exemption:

(1) The issuer shall file with the Securities Commissioner a notice of intention to sell using the SEC Form D, described in Rule 503 of SEC Regulation D, or any successor form, at least five (5) business days prior to the

first offering to an investor in this state in reliance upon this exemption. Said notice of intention to sell shall be accompanied by the following:

- (a) a non-refundable filing fee in the amount of three hundred (\$300.00) dollars;
- (b) a consent to service of process prescribed by Section 35-1-611(a) of the South Carolina Uniform Securities Act of 2005, on Form U-2, which has been executed by the issuer; and
- (c) a copy of any prospectus or disclosure documents to be used in connection with the offer and sale of the securities.

(2) A sales report shall be filed with the Securities Commissioner no later than thirty (30) days after the termination of the offering and shall include the names and addresses of the purchasers.

(3) In the event that an offering pursuant to this exemption continues for a period of more than twelve (12) months after the time required for the filing of the initial SEC Form D in this state, prior to the expiration of twelve (12) months from such time, the issuer shall file with the Securities Commissioner a notice stating that such offering is to be renewed for an additional period of up to twelve (12) months, together with a non-refundable renewal filing fee in the amount of three hundred (\$300.00) dollars and any necessary amendments or updates to documents previously filed with the Securities Commissioner.

(4) Any filing pursuant to this exemption shall be amended by filing with the Securities Commissioner such information and changes as may be necessary to correct any material misstatement or omission in the filing. Any prospectus or disclosure documents required to be filed by this Rule that were not prepared at the time of the initial filing, or which materially differ from the prospectus or disclosure documents included in any filing shall be filed with the Securities Commissioner at least two (2) business days prior to its use in this state. There shall be no fees charged for amendment of filings pursuant to this Rule.

(5) Any notice on, amendment to or renewal of an SEC Form D required by this section shall be manually signed by a person authorized by the issuer.

(6) For purposes of this exemption, a document shall be deemed to have been filed with the Securities Commissioner only when the document has been delivered to the Office of the Securities Commissioner.

E. Any prospectus or disclosure document utilized in this State in connection with offers or sales of securities in reliance on this exemption must carry substantially the following information shown boldly:

**THESE SECURITIES ARE OFFERED PURSUANT TO A CLAIM OF EXEMPTION UNDER ONE OR MORE SECURITIES ACTS. IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE PERSON OR ENTITY CREATING THE SECURITIES AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSIONER OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.**

**THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.**

F. The Securities Commissioner in his discretion shall be entitled to postpone the effective date of any filing pursuant to this exemption pending receipt of registered or required documents or pending further review or to deny the availability of this exemption by faxing, mailing, or otherwise notifying the issuer prior to the end of the fifth business day after filing of the SEC Form D referred to in Subsection D(1) above.

G. An issuer shall be deemed to have complied with Regulation D as used above if the issuer demonstrates to the Securities Commissioner that it has made a good faith effort to comply in all material respects with Regulation D, and the issuer otherwise qualifies for an exemption from registration under the Securities Act of 1933.

H. This exemption shall not apply to transactions offered and sold in reliance upon Rule 504 of SEC Regulation D, unless the following additional conditions are satisfied:

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(1) The aggregate offering price for securities sold in South Carolina shall not exceed two hundred fifty thousand (\$250,000.00) dollars during any twelve (12) month period;

(2) The limitation on the manner of offering and resale of securities set forth in Rules 502(c) and (d) of SEC Regulation D shall be satisfied; and

(3) The "sophisticated investor" qualifications for the nature of purchasers set forth in Rule 506(b)(2)(ii) of SEC Regulation D shall be satisfied.

I. Nothing in this exemption is intended to relieve or should be construed as in any way relieving issuers or persons acting on behalf of issuers from the anti-fraud provisions of the South Carolina Uniform Securities Act of 2005.

J. The Securities Commissioner may deny, revoke or suspend the availability of this exemption pending a further investigation and determination as to whether the issuer and all other parties acting on behalf of the issuer have effected full compliance with the terms and conditions hereof, and of the South Carolina Uniform Securities Act of 2005. Neither compliance nor attempted compliance with this exemption, nor the absence of any objection or order from the Securities Commissioner with respect to any offering of securities undertaken pursuant to this exemption, shall be deemed an approval of any securities offered pursuant to this exemption.

K. The aggregate number of unaccredited investors sold under this exemption shall not exceed thirty-five (35) purchasers in this state during any twelve (12) month period, exclusive of purchasers acquiring securities registered pursuant to Section 35-1-304 of the South Carolina Uniform Securities Act of 2005.

L. All terms used in this exemption, to the extent not otherwise defined, shall have the meanings ascribed to them in SEC Regulation D.

### 13-205. Accredited Investor Exemption.

Any offer or sale of a security by an issuer in a transaction that meets the requirements of this Rule is exempted from Sections 35-1-301 and 35-1-504.

A. Sales of securities shall be made only to accredited investors. "Accredited investor" is defined in 17 C.F.R. 230.501(a), as amended.

B. The exemption is not available to an issuer that is in the development stage that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

C. The issuer must reasonably believe that all purchasers are purchasing for investment and not with the view to or for sale in connection with a distribution of the security. Securities issued under this exemption may only be resold pursuant to a registration or an exemption under the South Carolina Uniform Securities Act of 2005 or other appropriate state or federal securities acts.

D. (1) A general announcement of the proposed offering may be made by any means.

(2) The general announcement must include the following:

(a) The name and address of the issuer of the securities;

(b) The name, a brief description and price (if known) of any security to be issued;

(c) A brief description of the business of the issuer;

(d) The name, address and telephone number of the person to contact for additional information; and

(e) A statement that:

(i) sales will only be made to accredited investors;

(ii) no money or other consideration is being solicited or will be accepted; and

(iii) the securities have not been registered with or approved by any state securities agency or the United States Securities and Exchange Commission and are being offered and sold pursuant to an exemption from registration.

(3) The general announcement may include additional information permitted by the Securities Commissioner.

(4) The general announcement of the proposed offering shall only contain the information that is required or permitted in Subsections D(2) and (3) of this Rule.

(5) Dissemination of the general announcement of the proposed offering to persons who are not accredited investors shall not disqualify the issuer from claiming the exemption under this Rule.

- E. The issuer, in connection with an offer, may provide information in addition to the general announcement under Section D above, once the issuer has determined that the prospective purchaser is an accredited investor.
- F. No telephone solicitation shall be permitted until the issuer has determined that the prospective purchaser to be solicited is an accredited investor.
- G. The issuer shall file with the Securities Commission a notice of the transaction, a copy of the general announcement, and a fee of three hundred (\$300.00) dollars within fifteen (15) days after the first sale in this state.

### ARTICLE 3

#### REGISTRATION OF SECURITIES AND NOTICE FILING OF FEDERAL COVERED SECURITIES

##### REG.

- 13-301. Notice Filing Requirements for Federal Covered Securities.
- 13-302. Prospectus Content and Filing Requirements for Securities Registered by Qualification.
- 13-303. Impoundment of Proceeds or Stock.
- 13-304. Underwriting Expenses, Underwriter Warrants, Selling Expenses and Selling Security Holders.
- 13-305. Options and Warrants.
- 13-306. Form and Minimum Provisions for Debt Securities.
- 13-307. Promoters' Equity.
- 13-308. Required Filings for Federal Covered Securities under Section 18(b)(4)(D) of the Securities Act of 1933

#### **13-301. Notice Filing Requirements for Federal Covered Securities.**

The filings listed in Section 35-1-302(a)(1) and (2) and 35-1-302(c) shall be made and fees paid in accordance with Section 35-1-702(a).

#### **13-302. Prospectus Content and Filing Requirements for Securities Registered by Qualification.**

As a condition of registration, a prospectus containing the information listed in Sections 35-1-304(b)(1) through (18) shall be sent or given to each person to whom an offer is made, before or concurrently with the earliest of the conditions listed in Section 35-1-304 (e)(1) through (4).

#### **13-302. Impoundment of Proceeds or Stock.**

A. The Securities Commissioner may require as a condition of registration that a security issued within the previous five (5) years or to be issued to a promoter for a consideration substantially less than the public offering price or to a person for a consideration other than cash be deposited in escrow; and that the proceeds from the sale of the registered security in this State be impounded until the issuer receives a specified amount from the sale of the security either in this State or elsewhere.

##### **B. Impoundment of Proceeds**

(1) When proceeds from the sale of securities are required to be impounded pursuant to Section A of this Rule, the proceeds must be deposited in an interest bearing escrow or trust account with an impoundment agent. The impoundment agent may not be affiliated with the issuer, its affiliates, its officers or directors, the underwriter or any promoter and a valid impoundment agreement is required.

(2) For an impoundment agreement to be considered valid, the following terms and conditions must be met:

- (a) A signed copy of the agreement must be filed with the Securities Commissioner;
- (b) The agreement must be signed by an officer of the issuer, an officer of the underwriter (if applicable), and an officer of the impoundment agent. The aforesaid individuals must have the authority to sign such documents;
- (c) The agreement shall provide that the impounded proceeds are not subject to claims by creditors,

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affiliates, associates, or underwriters of the issuer until the proceeds have been released to the issuer pursuant to the terms of the agreement;

(d) A summary of the principal terms of the agreement must be included in the registration statement; and

(e) The agreement must provide that the Securities Commissioner has the right to inspect and make or require to be made copies of the records of the impoundment agent at any reasonable time wherever the records are located.

(3) The impoundment agent shall notify the Securities Commissioner in writing upon the release of the proceeds. If the proceeds are insufficient to meet the minimum requirements as established by the Securities Commissioner in his sole discretion within the time prescribed by the agreement the impoundment agent must release and return the proceeds directly to the investors with or without interest, depending upon the terms and conditions of the agreement, and without deduction for expenses, including impoundment agent fees. All interest earned shall be distributed pro-rata to the investors, along with the proceeds.

(4) If a person, who is an underwriter or an officer, director, promoter, affiliate or associate of the issuer, purchases securities that are a part of the public offering being sold pursuant to the registration statement and if the proceeds from that purchase are used for the purpose of completing the impoundment requirements imposed by this Rule, the following conditions must be met:

(a) The persons must be purchasing the securities with investment intent rather than with intent of resale and on the same terms as unaffiliated public investors;

(b) The prospectus must contain a disclosure that such persons may purchase securities of the issuer for purposes of completing the impoundment requirements imposed by this Rule; and

(c) All securities so purchased will neither be defined as promotional shares, nor be subject to escrow under Section C of this Rule.

### C. Escrow of Security

(1) When a security is required to be escrowed pursuant to Section A of this Rule, the security shall be escrowed with an escrow agent who is not affiliated with the issuer, its affiliates, officers or directors, the underwriter or any promoter and a valid escrow agreement is required.

(2) In order for an escrow agreement to be considered valid pursuant to this Rule, a signed copy of the agreement must be filed with and accepted by the Securities Commissioner who, in his discretion, may require additional terms and condition prior to acceptance.

## 13-304: Underwriting Expenses, Underwriter Warrants, Selling Expenses, and Selling Security Holders.

A. An offer or sale of securities may be disallowed by the Securities Commissioner if the underwriting expenses to be incurred exceed seventeen (17%) percent of the gross proceeds from the public offering.

B. Underwriting expenses may include but are not limited to:

- (1) Commissions to underwriters or broker-dealers;
- (2) Non-accountable fees or expenses to be paid to the underwriter or broker-dealer;
- (3) Underwriter warrants, which shall be valued using the following formula:

$$\frac{165\% \text{ of the offering price} - \text{the exercise price}}{2} \times \frac{\text{the number of shares underlying the warrants}}{\text{the number of shares offered}} = \text{value}$$

The value may be reduced by twenty percent (20%) if the exercise period of the warrants is extended from one (1) year after the public offering to two (2) years after the public offering and by forty percent (40%) if the exercise period of the warrants is extended from one (1) year after the public offering to three (3) years after the public offering. Warrants may be granted to underwriters only under the following conditions and subject to the following restrictions:

- (a) The underwriter is a managing underwriter;
- (b) The public offering is either a firmly underwritten offering or a "minimum-maximum" offering.

Options or warrants may be issued in a "minimum-maximum" public offering only if:

- (i) The options or warrants are issued on a pro rata basis; and
- (ii) The "minimum" amount of securities has been sold;
- (c) The exercise price of the warrants must be at least equal to the public offering price;

(d) The number of shares covered by underwriter options or warrants may not exceed ten percent (10%) of the shares of common stock actually sold in the public offering;

(e) The life of the options or warrants may not exceed a period of five (5) years from the completion date of the public offering;

(f) The options or warrants are not exercisable for the first year after the completion date of the public offering;

(g) Options or warrants may not be transferred, except:

(i) To partners of the underwriter, if the underwriter is a partnership;

(ii) To officers and employees of the underwriter, who are also shareholders of the underwriter, if the underwriter is a corporation;

(iii) By will, pursuant to the laws of descent and distribution; or

(iv) By the operation of law.

(h) The warrant agreement may not allow for a reduction in the exercise price of the options or warrants resulting from the subsequent issuance of shares by the issuer except where such issuances are pursuant to a:

(i) Stock dividend or stock split; or

(ii) merger, consolidation, reclassification, reorganization, recapitalization, or sale of assets.

(4) Rights of first refusal, which shall be valued at one percent (1%) of the public offering or the amount payable to the underwriter if the issuer terminates the right of first refusal;

(5) Solicitation fees payable to the underwriter, which shall be valued at the lesser of actual cost or one percent (1%) of the public offering if the fees are payable within one (1) year of the offering;

(6) Financial consulting or financial advisory agreements with an underwriter or any other similar type of agreement or fees, however designated, which shall be valued at actual cost;

(7) Underwriter due diligence expenses;

(8) Payments made either six (6) months prior to or required to be made six (6) months following the public offering to investor relations firms designated by the underwriter; and

(9) Other underwriting expenses incurred in connection with the public offering of securities as determined by the Securities Commissioner.

C. Underwriting expenses shall not include financial consulting or financial advisory agreements with the underwriter payable at the time the services are rendered provided that such agreement was entered into at least twelve (12) months prior to the registration being filed with the Securities and Exchange Commission.

D. An offer or sale of securities may be disallowed by the Securities Commissioner if the direct and indirect selling expenses of the offering exceed twenty percent (20%) of the gross proceeds from the public offering.

E. Selling expenses may include but are not limited to:

(1) Commissions to underwriters or broker-dealers;

(2) Non-accountable fees or expenses to be paid to the underwriters or broker-dealers;

(3) Auditor's and accountant's fees;

(4) Legal fees;

(5) The cost of printing prospectuses, circulars and other documents required to comply with securities laws and regulations;

(6) Charges of transfer agents, registrars, indenture trustees, escrow holders, depositories, engineers, appraisers, and other experts;

(7) The cost of authorizing and preparing the securities, including issue taxes and stamps;

(8) Financial consulting or financial advisory agreements with an underwriter or any similar type agreement or fees, however designated, which shall be valued at actual cost, excluding financial and consulting agreements which are entered into at least twelve (12) months before the registration is filed with the Securities and Exchange Commission;

(9) Payments made either six (6) months prior to or required to be made six (6) months following the public offering to investor relations firms designated by the underwriter; and

(10) Other cash expenses incurred in connection with the public offering of securities as determined by the Securities Commissioner.

F. A public offering or sale of securities that includes selling security holders offering more than ten percent (10%) of the securities to be sold in the public offering may be disallowed by the Securities Commissioner unless:

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(1) Selling security holders offering or selling more than ten percent (10%) but less than fifty percent (50%) of the securities to be sold in the public offering pay a pro-rata share of all selling expenses of the public offering, excluding the legal and accounting expenses of the public offering;

(2) Selling security holders offering more than fifty percent (50%) of the securities to be sold in the offering pay a pro-rata share of all selling expenses of the public offering; and

(3) The prospectus or offering document discloses the amount of selling expenses which the selling security holders will pay.

G. With the exception of underwriter or broker-dealer compensation, Subsections F (1), (2), and (3) above shall not apply if the selling security holders have a written agreement with the issuer, that was entered into in an arm's length transaction, whereby the issuer has agreed to pay all of the selling security holder's selling expenses.

### **13-305. Options and Warrants.**

A. Options or warrants may be issued to underwriters as compensation in connection with a public offering provided those options or warrants comply with the requirements of Rule 13-304.

B. Options or warrants may be granted to unaffiliated institutional investors in connection with loans if:

(1) The options or warrants are issued contemporaneously with the issuance of the loan;

(2) The options or warrants are granted as the result of bona fide negotiations between the issuer and the unaffiliated institutional investor;

(3) The exercise price of the options or warrants is not less than the fair market value of the issuer's shares of common stock underlying the options or warrants on the date that the loan was approved; and

(4) The number of shares issuable upon exercise of the options or warrants multiplied by the exercise price thereof does not exceed the face amount of the loan.

C. Options or warrants may be granted in connection with acquisitions, reorganizations, consolidations or mergers if:

(1) They are granted to persons who are unaffiliated with the issuer; and

(2) The earnings of the issuer at the time of grant and after giving effect to the acquisition, reorganization, consolidation or merger would not be materially diluted by the exercise of the options or warrants.

D. Options and warrants may not be granted at an exercise price of less than eighty-five percent (85%) of fair market value of the issuer's underlying shares of common stock on the date of the grant. The issuer, and its officers and directors, should consider the advisability of obtaining a concurrent appraisal, by a qualified independent appraiser, of the value of the shares of common stock at the time of the grant as evidence of the fair market value.

E. The total number of options and warrants issued or reserved for issuance on the date of the public offering, may not, for one (1) year following the effective date of the offering, exceed fifteen percent (15%) of the issuer's shares of common stock outstanding at the date of the public offering plus the number of shares of common stock being offered that are firmly underwritten, or in the case of offerings not firmly underwritten, the number of shares of common stock required to be sold in order to meet the minimum offering amount. In calculating the number of options and warrants, the following are excluded:

(1) Options and warrants that were issued, or reserved for issuance, pursuant to Sections B and C, above;

(2) Options and warrants that were issued, or reserved for issuance, to employees or consultants who are not promoters, in connection with an incentive stock option plan qualified under section 422 of the Internal Revenue Code; and

(3) Options and warrants that are exercisable at or above the public offering price.

F. No options or warrants issued and outstanding at the date of the public offering, excluding those options and warrants issued pursuant to an incentive stock option plan qualified under section 422 of the Internal Revenue Code, may be exercisable more than five (5) years from the date of the public offering.

G. If the number of options and warrants that are issued and outstanding and/or reserved for issuance is material, the final offering circular shall disclose the potential dilutive effects of such options and warrants.

### **13-306: Form and Minimum Provisions for Debt Securities.**

A. Provisions or terms of an issue of debt securities shall be considered inadequate for the protection of the security holders, and shall be considered grounds for denial of an application for registration under Section

35-1-306(a)(7) which do not as a minimum adequately define the following, either in the security itself or in a trust indenture:

- (1) Maturity date which is the date upon which the principal shall become due and payable. Demand securities, with no maturity date, will not be accepted.
- (2) Interest rate and interest payment dates.
- (3) Assets securing the issue and the liens thereon, or if none, a statement to that effect.
- (4) Conversion feature, if any, including protection of such feature from dilution.
- (5) Position of the issue in the debt structure of the company, both present and future.
- (6) Events of default, including provision that default in payment either of principal or interest on any one security of an issue shall constitute a default on the entire issue.
- (7) Rights of the security holders in default, including the right to a list of names and addresses of all holders of an issue of registered securities in default, if there is no trustee to act for all holders, and the right of the holders of twenty-five percent (25%) in principal amount of the issue outstanding to declare the entire issue due and payable.
- (8) Duties of the trustee, if any.
- (9) Call features, if any.
- (10) Denominations in which issued.

B. The security should be in such form, and bear such descriptive nomenclature, as is customary and recognized in the field of securities.

### **13-307. Promoters' Equity.**

A public securities offering by a promotional or development stage company may be disallowed by the Securities Commissioner if the promoter's equity investment is less than:

- A. Ten percent (10%) of the first one million (\$1,000,000.00) dollars of the aggregate public offering; and
- B. Seven percent (7%) of the next five hundred thousand (\$500,000.00) dollars of the aggregate public offering; and
- C. Five percent (5%) of the next five hundred thousand (\$500,000.00) dollars of the aggregate public offering; and
- D. Two and one-half percent (2½%) of the balance over two million (\$2,000,000.00) dollars, which may include items submitted by the promoter to meet this requirement whose value has been accepted by the Securities Commissioner or his designee.

### **13-308. Required filings for federal covered securities under Section 18(b)(4)(D) of the Securities Act of 1933.**

A. With respect to a security that is a federal covered security under Section 18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(4)(D)), a notice filing, including a copy of Form D including the appendix, a consent to service of process complying with Section 35-1-611 of the South Carolina Uniform Securities Act of 2005, and a fee in the amount of three hundred (\$300.00) dollars must be filed with the Securities Commissioner not later than fifteen (15) days after the first sale of the security in this State.

B. The notice filing under Section A of this Rule is effective for one (1) year from the date of its filing with the Securities Commissioner after which time, if the offering is to continue, a renewal notice must be filed. The renewal notice filing shall include the same items as are required for an initial notice filing, including payment of the filing fee in the amount of three hundred (\$300.00) dollars.

## **ARTICLE 4**

### **BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS, INVESTMENT ADVISER REPRESENTATIVES, AND FEDERAL COVERED INVESTMENT ADVISERS**

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REG.

- 13-401. Examinations for Securities Agents, Investment Advisers, and Investment Adviser Representatives.
- 13-402. Exemption for Certain Canadian Broker-Dealers.
- 13-403. Use of the NASD CRD and IARD to Receive Certain Broker-Dealer, Agent, Investment Adviser, and Investment Adviser Representative Registrations, Terminations, and other Forms and Fees.
- 13-404. Criminal Record Requirement for Broker-Dealer Agents and Investment Adviser Representatives.
- 13-405. Broker-Dealer Recordkeeping, Minimum Financial Reporting and Bonding Requirements.
- 13-406. Investment Adviser Minimum Capital and Bonding Requirements.
- 13-407. Cash or Security Deposits in Lieu of Surety Bond.
- 13-408. Recordkeeping Requirements for Investment Advisers.

### **13-401. Examinations for Securities Agents, Investment Advisers, and Investment Adviser Representatives.**

A. Examinations for securities agents. A passing grade on an examination appropriate based upon the type of securities being sold, and the Uniform Securities Agent State Law Examination (Series 63) or the Uniform Combined State Law Exam (Series 66) or such other examination as may be designated by the Securities Commissioner by rule or order, must be furnished, as proof, in any application for registration as a principal of a broker-dealer or registration as an agent. No person who has passed the designated examinations shall again be required to pass another examination unless for a period of twenty-four (24) or more consecutive months he shall not have been registered as an agent or as a principal, officer or director of a broker-dealer. An upgrading in the type of business being conducted by the agent or broker-dealer may require the passing of a new examination.

B. Examinations for investment advisers. As a condition of initial or renewal registration, every applicant for registration as an investment adviser, an investment adviser representative, or as a broker-dealer acting or proposing to act as an investment adviser, shall furnish the Securities Commissioner proof that he or she has obtained a passing score on the following examinations:

- (1) The Uniform Investment Adviser Law Examination (Series 65);
- (2) The General Securities Representative Examination (Series 7) and the Uniform Combined State Law Examination (Series 66); or
- (3) Such other examination as may be designated by the Securities Commissioner by rule or order.

C. Waivers. The examination requirements of Subsection B of this Rule are waived for an individual who currently holds one or more of the following professional designations:

- (1) Certified Financial Planner (CFP) issued by the Certified Financial Planner Board of Standards, Inc.;
- (2) Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;
- (3) Personal Financial Specialists (PFS) administered by the American Institute of Certified Public

Accountants;

- (4) Chartered Financial Analyst (CFA) granted by the Association for Investment Management and Research;
- (5) Chartered Investment Counselor (CIC) granted by the Investment Counsel Association of America; or
- (6) Such other professional designation as the Securities Commissioner may by rule or order recognize.

### **REG. 13-402. Exemptions for Certain Canadian Broker-Dealers.**

A. A broker-dealer that is registered in Canada and that does not have a place of business in this State shall be exempt from the registration requirements of Section 35-1-401 of the South Carolina Uniform Securities Act of 2005 so long as it complies with the following conditions:

- (1) It only effects or attempts to effect transactions in securities with or for, or by:
  - (a) an individual from Canada who is temporarily present in this State and with whom the broker-dealer had a bona fide customer relationship before the individual entered the United States; or
  - (b) an individual from Canada who is present in this State and whose transactions are in a self-directed tax advantaged retirement plan of which the individual is the holder or contributor.
  - (c) With or for a person from Canada who is present in this state, whose transactions are in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor; and,
- (2) Files a notice in the form of his current application required by the jurisdiction in which his head office

is located and a consent to service of process;

(3) Is a member of a self-regulatory organization or stock exchange in Canada;

(4) Maintains his provincial or territorial registration and his membership in a self - regulatory organization or stock exchange in good standing;

(5) Discloses to his clients in this state that he is not subject to the full regulatory requirements of the South Carolina Uniform Securities Act of 2005; and,

(6) Is not in violation of Section 35-1-501 or other anti-fraud provisions of the South Carolina Uniform Securities Act of 2005 and the rules and regulations promulgated thereunder.

B. An offer or sale of a security effected by a person exempt from registration pursuant to Section A of this Rule shall be deemed to be an exempt transaction not requiring registration pursuant to the South Carolina Uniform Securities Act of 2005.

### **13-403. Use of the NASD CRD and IARD to Receive Certain Broker-Dealer, Agent, Investment Adviser, and Investment Adviser Representative Registrations, Terminations, and Other Forms and Fees.**

A. Registration of NASD Member Firms and their agents. NASD member firms and their agents shall file all applications and amendments and pay all fees required for registration under the South Carolina Uniform Securities Act of 2005 with the Central Registration Depository (CRD) System.

B. Registration of Investment Advisers and Investment Adviser Representatives. Federal covered investment advisers and their investment adviser representatives required to file/register in this State must file their applications and amendments and pay all fees required for registration under the South Carolina Uniform Securities Act of 2005 with the Investment Adviser Registration Depository (IARD) System. Investment advisers and their investment adviser representatives may either file their applications and amendments and pay all fees required for registration under the South Carolina Uniform Securities Act of 2005 with the IARD System or directly with the Securities Commissioner.

C. Registration of non-NASD member broker-dealers and their agents. Non-NASD member firms who cannot file via the CRD System must register directly with the Securities Commissioner providing the information and using any form required for the filing of a uniform application and, upon request by the Securities Commissioner, by providing any other financial or information or record that the Securities Commissioner determines is appropriate.

### **Criminal Record Requirement for Broker-Dealer Agents and Investment Adviser Representatives.**

Pursuant to Section 35-1-406 (a)(2), every person applying for registration as a broker-dealer agent or investment adviser representative in this State must submit to the Securities Commissioner a criminal record history obtained from the South Carolina Law Enforcement Division. This requirement is waived for NASD registered broker-dealer agents.

### **13-405. Broker-Dealer Recordkeeping, Minimum Financial Reporting and Bonding Requirements.**

A. Broker-Dealer Recordkeeping Requirements.

(1) Unless otherwise provided by order of the United States Securities and Exchange Commission ("SEC"), each broker-dealer registered or required to be registered under the South Carolina Uniform Securities Act of 2005 shall make, maintain and preserve books and records in compliance with SEC Rules 17a-3 (17C.F.R. 240.17a-3 (1996)), 17a-4 (17 C.F.R. 240.17a-4 (1996)), 15c2-6 (17 C.F.R. 240.15c2-6 (1996)) and 15c2-11 (17 C.F.R. 240.15c2-11 (1996)).

(2) To the extent that the SEC promulgates changes to the above-referenced rules, broker-dealers in compliance with such rules as amended shall not be subject to enforcement action by the Securities Commissioner for violation of this rule to the extent that the violation results solely from the broker-dealer's compliance with the amended rule.

B. Broker-Dealer Minimum Financial and Financial Reporting Requirements.

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(1) Each broker-dealer registered or required to be registered under the South Carolina Uniform Securities Act of 2005 shall comply with SEC Rules 15c3-1 (17 C.F.R. 240.15c3-1 (1996)), 15c3-2 (17 C.F.R. 240.15c3-2(1996)), and 15c3-3(17C.F.R. 240.15c-3(1996)).

(2) Each broker-dealer registered or required to be registered under the South Carolina Uniform Securities Act of 2005 shall comply with SEC Rule 17a-11 (17C.F.R. 240.17a-11) and shall file with the Securities Commissioner upon request copies of notices and reports required under Rules 17a-5, 17a-10, and 17a-11.

(3) To the extent that the SEC promulgates changes to the above-referenced rules, broker-dealers in compliance with such rules as amended shall not be subject to enforcement action by the securities division for violation of this rule to the extent that the violation results solely from the broker-dealer's compliance with the amended rule.

### **C. Intrastate Broker-Dealer Bonding Requirements.**

Every broker-dealer registered or required to be registered under the South Carolina Uniform Securities Act of 2005 whose business is exclusively intrastate, who does not make use of any facility of a national securities exchange and who is not registered under section 15 of the Securities Exchange Act of 1934, shall be bonded in an amount of not less than fifty thousand (\$50,000.00) dollars by a bonding company qualified to do business in this State. The bond so posted must require the broker-dealer to comply with the provisions of the South Carolina Uniform Securities Act of 2005 and those orders and regulations as the Securities Commissioner may from time to time prescribe.

## **13-406. Investment Adviser Minimum Capital and Bonding Requirements.**

### **A. Minimum financial requirements for investment advisers.**

Unless an investment adviser posts a bond pursuant to 35-1-411(e) and Section B below an investment adviser registered or required to be registered pursuant to the South Carolina Uniform Securities Act of 2005 who has custody of client funds or securities shall maintain at all times a minimum net worth of fifty thousand (\$50,000.00) dollars, and every investment adviser registered or required to be registered under the South Carolina Uniform Securities Act of 2005 who has discretionary authority over client funds or securities but does not have custody of client funds or securities, shall maintain at all times a minimum net worth of thirty five thousand (\$35,000.00) dollars. Should net worth fall below those levels after an investment adviser is registered, notice must be given to the Securities Commissioner by the close of business the next day. Investment activities also must cease until net worth is restored to the required levels. The term "net worth" is the excess of assets over liabilities as determined by generally accepted accounting principles.

### **B. Bonding requirements.**

Every investment adviser having custody of or discretionary authority over client funds or securities and not meeting the minimum financial requirements required of such adviser pursuant to Section A above shall post cash or securities (in accordance with Rule 13-407 or such other rule or order promulgated by the Securities Commissioner) or a surety bond in the amount of fifty thousand (\$50,000.00) dollars for investment advisers having custody and thirty five thousand (\$35,000.00) dollars for investment advisers having discretionary authority but not custody of client funds or securities. Surety bonds required to be posted pursuant to this Rule must be posted by a bonding company qualified to do business in this State.

C. An investment adviser that has its principal place of business in a state other than this State shall be exempt from the requirements of Sections A and B above provided that the investment adviser is registered as an investment adviser in the state where it has its principal place of business and is in compliance with such state's requirements relating to net worth or bonding.

D. The Securities Commissioner may, by order, exempt certain registered investment advisers from the surety bond posting requirements.

## **13-407. Cash or Security Deposits in Lieu of Surety Bond.**

A deposit of cash or securities in lieu of the surety bond required by Rule 13-406 shall be considered appropriate within the intent and meaning of such section and shall be accepted by the Securities Commissioner under the following terms and conditions:

(1) With respect to a deposit of securities, that the securities be general obligations of, and be guaranteed both as to principal and interest by, the United States, any state or any political subdivision of a state, provided that such obligation currently be rated A or better in a Standard & Poor's Corporation Record or a Mergent's Manual, and provided further that the securities on the day of deposit have a net realizable market value of at least one hundred twenty-five percent (125%) of the penal sum of the bond required of the depositor;

(2) With respect to a deposit of cash, that the amount of the cash be at least equal to the amount of the bond otherwise required of the depositor;

(3) That as a condition of any renewal of registration by means of an in lieu deposit, cash so deposited be at least equal to the amount of the bond otherwise required of the depositor upon the renewal date and, for securities, the net realizable market value of securities so deposited be at least one hundred twenty-five percent (125%) of such sum on the renewal date;

(4) That the cash or securities shall be deposited in a bank located in South Carolina and organized under the laws of the United States or of the State of South Carolina;

(5) That the cash or securities so deposited shall be under the control of the Securities Commissioner and shall be for the use and benefit of any person damaged by any violation of the provisions of the South Carolina Uniform Securities Act of 2005, or other state securities act as the Securities Commissioner may in his discretion allow, by the depositor or his agent; and

(6) That the cash or securities so deposited shall remain on deposit and under the control of the Securities Commissioner for a period of three (3) years following termination of registration of the depositor. Any cash or securities then remaining, including any accumulated interest, shall be released to the depositor upon written request to, and then order of, the Securities Commissioner.

#### **13-408. Recordkeeping Requirements for Investment Advisers.**

A. Every investment adviser registered or required to be registered under the South Carolina Uniform Securities Act of 2005 shall make and keep true, accurate and current the following books, ledgers and records:

(1) A journal or journals, including cash receipts and disbursement records, and any other records of original entry forming the basis of entries in any ledger;

(2) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts;

(3) A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from a client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order; and shall show the account for which entered, the date of entry, and the bank or broker-dealer by or through who executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated;

(4) All check books, bank statements, canceled checks and cash reconciliations of the investment adviser;

(5) All bills or statements (or copies of), paid or unpaid, relating to the investment adviser's business as an investment adviser;

(6) All trial balances, financial statements and internal audit working papers relating to the investment adviser's business as an investment adviser;

(7) Originals of all written communications received and copies of all written communications sent by the investment adviser relevant to (a) any recommendation made or proposed to be made and any advice given or proposed to be given, (b) any receipt, disbursement or delivery of funds or securities, or (c) the placing or execution of any order to purchase or sell any security, provided, however, (i) that the investment adviser shall not be required to keep any unsolicited market letters or other similar communications of general public distribution not prepared by or for the investment adviser, and (ii) that if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than ten persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if the notice, circular or advertisement is distributed to persons named on

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any list, the investment adviser shall retain with the copy of the notice, circular or advertisement a memorandum describing the list and its source;

(8) A list or other record of all accounts which identifies the accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client;

(9) A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser;

(10) A copy in writing of each agreement entered into by the investment adviser with any client, and all other written agreements otherwise relating to the investment adviser's business as an investment adviser;

(11) A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including those by electronic media, that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser), and if the notice, circular, advertisement, newspaper, newspaper article, investment letter, bulletin, or other communication recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation;

(12) Records of Beneficial ownership (investment adviser or investment adviser representative)

(a) A record of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except:

(i) transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and

(ii) transactions in securities which are direct obligations of the United States.

The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e. purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than ten (10) days after the end of the calendar quarter in which the transaction was effected.

(b) For purposes of Subsection A (12) above, the following definitions will apply:

(i) "advisory representative" shall mean any partner, officer or director of the investment investment adviser; any employee who participates or participated in any way in the determination of which recommendations shall or should be made; any employee who, in connection with his duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations:

(A) any person in a control relationship to the investment adviser;

(B) any affiliated person of a controlling person; and

(C) any affiliated person of an affiliated person;

(ii) "control" shall mean the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than twenty-five percent (25%) of the voting securities of a company shall be presumed to control such company.

(c) An investment adviser shall not be deemed to have violated the provisions of Subsection A (12) above because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that it instituted adequate procedures and used reasonable diligence to promptly obtain reports of all transactions required to be recorded;

(13) Records of Beneficial ownership (other)

(a) Notwithstanding the provisions of Subsection A (12) above, where the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except:

- (i) transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and
- (ii) transactions in securities which are direct obligations of the United States.

The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e. purchase, sale, or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(b) An investment adviser is “primarily engaged in a business or businesses other than advising investment advisory clients” when, for each of its most recent three (3) fiscal years or for the period of time since organization, whichever is lesser, the investment adviser derived from such other business or businesses, on an unconsolidated basis, more than fifty percent (50%) of:

- (i) its total sales and revenues; and
- (ii) its income (or loss) before income taxes and extraordinary items.

(c) For purposes of Subsection A (13) above, the following definitions will apply:

(i) “advisory representative”, when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, shall mean any partner, officer, director, or employee of the investment adviser who participates in any way in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons, who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of such recommendations or of the information concerning the recommendations:

- (A) any person in a control relationship to the investment adviser;
- (B) any affiliated person of a controlling person; and
- (C) any affiliated person of an affiliated person;

(ii) “control” shall mean the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than twenty five percent (25%) of the voting securities of a company shall be presumed to control such company.

(d) An investment adviser shall not be deemed to have violated the provisions of Subsection A (13) above because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that it instituted adequate procedures and used reasonable due diligence to promptly obtain reports of all transactions required to be recorded;

(14) A copy of each written statement and each amendment or revision, given or sent, to any client or prospective client of the investment adviser, and a record of the dates that each written statement and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently became a client;

(15) For each client that was obtained by the adviser by means of a solicitor to whom a cash fee was paid by the adviser:

- (a) evidence of a written agreement to which the adviser is a party related to the payment of such fee;
- (b) a signed and dated acknowledgment of receipt from the client evidencing the client’s receipt of the investment adviser’s disclosure statement and a written disclosure statement of the solicitor; and
- (c) a copy of the solicitor’s written disclosure statement. The written agreement, acknowledgment and solicitor disclosure statement will be considered to be in compliance if such documents are in compliance with Rule 275.206(4)-3 of the Investment Advisers Act of 1940.

For purposes of this Rule, the term “solicitor” shall mean any person or entity who, for compensation, acts as an agent of an investment adviser in referring potential clients;

(16) All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including but not limited to electronic media that the investment adviser circulates or distributes, directly, or indirectly, to two (2) or more persons (other than persons connected with the investment

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adviser); provided, however, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this paragraph;

(17) A file containing a copy of all written communications received or sent regarding any complaints or litigation involving the investment adviser or any investment adviser representative or other employee, and any current or former customer or client;

(18) Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client;

(19) Written procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations; and

(20) A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self regulatory organization and that pertains to the registrant or its investment adviser representatives. The file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

B. If an investment adviser subject to Section A of this Rule has custody or possession of securities or funds of any client, the records required to be made and kept under Section A above shall include:

(1) A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for all accounts and all other debits and credits to the accounts;

(2) A separate ledger account for each client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase and sale, and all debits and credits;

(3) Copies of confirmations of all transactions effected by or for the account of any client; and

(4) A record for each security in which any client has a position, which record shall show the name of each client having an interest in the security, the amount or interest of each client, and the location of each security.

C. Every investment adviser subject to Subsection A of this Rule who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:

(1) Records showing separately for each client the securities purchased and sold, and the date, amount and price of each purchase and sale; and

(2) For each security in which any client has a current position, information from which the investment adviser can promptly furnish the name of each client and the current amount or interest of the client.

D. Any books or records required by this Rule may be maintained by the investment adviser in such manner that the identity of any client to whom the investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

E. Every investment adviser subject to Section A of this rule shall preserve the following records in the manner prescribed:

(1) All books and records required to be made under the provisions of Subsections A to C (1), inclusive, of this Rule (except for books and records required to be made under the provisions of Subsections A (11) and A (16) of this Rule), shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on the record, the first two (2) years in the principal office of the investment adviser;

(2) Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved for at least three (3) years after termination of the enterprise;

(3) Books and records required to be made under the provisions of Subsections A (11) and A (16) of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five (5) years, the first two (2) years in the principal office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including communications made by electronic media;

(4) Books and records required to be made under the provisions of Subsections A (11) and A (16) of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five (5) years, the first two (2) years in the principal office of the investment adviser, from the end of the fiscal year during which the

investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including communications made by electronic media; and

(5) Notwithstanding other record preservation requirements of this Rule, the following records or copies shall be required to be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services: (a) records required to be preserved under Subsections A (3), A (7)-(10), A (14)-(15), A (17)-(19), B and C inclusive, of this Rule, and (b) the records or copies required under the provision of Subsections A (11) and A (16) of this Rule, which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business locations physical address, mailing address, electronic mailing address, or telephone number. The records will be maintained for the period described in Subsection E (1) of this Rule.

F. An investment adviser subject to Section A of this Rule, before ceasing to conduct or discontinuing business as an investment adviser shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this Rule for the remainder of the period specified in this Rule, and shall notify the Securities Commissioner in writing of the exact address where the books and records will be maintained during the period.

G. Preservation and reproduction of records

(1) The records required to be maintained and preserved pursuant to this Rule may be immediately produced or reproduced by photographic film or, as provided in Subsection G (2) below, on magnetic disk, tape or other computer storage medium, and be maintained and preserved for the required time in that form. If records are produced or reproduced by photographic film or computer storage medium, the investment adviser shall:

(a) arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record;

(b) be ready at all times to promptly provide a facsimile, enlargement of film or computer printout or copy of the computer storage medium which the Securities Commissioner, by his examiners or other representative may request;

(c) store separately from the original one other copy of the film or computer storage medium for the time required;

(d) with respect to records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records so as to reasonably safeguard records from loss, alteration, or destruction; and

(e) with respect to records stored on photographic film, at all times have available for the Securities Commissioner's examination of the records facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.

(2) Pursuant to Subsection G (1) above an adviser may maintain and preserve on computer tape or disk or other computer storage medium, records which, in the ordinary course of the adviser's business, are created by the adviser on electronic media or are received by the adviser solely on electronic media or by electronic data transmission.

H. For purposes of this Rule, "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client; and "discretionary power" shall not include discretion as to the price at which or the time when a transaction is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

I. Any book or other record made, kept, maintained and preserved in compliance with Rules 17a-3 [17 C.F.R. 240.17a-3] and 17a-4 [17 C.F.R. 240.17a-4] under the Securities Exchange Act of 1934, which is substantially the same as a book or other record required to be made, kept, maintained and preserved under this Rule, shall be deemed to be made, kept, maintained and preserved in compliance with this Rule.

J. Every investment adviser registered or required to be registered in this State that has its principal place of business in a state other than this State shall be exempt from the requirements of this Rule, provided the investment adviser is licensed in such state and is in compliance with such state's recordkeeping requirements.

## ARTICLE FIVE

### FRAUD AND LIABILITIES

## 40 EMERGENCY REGULATIONS

REG.

13-501. Dishonest or Unethical Practices by Broker-Dealers.

13-502. Dishonest or Unethical Practices by Investment Advisers, Investment Adviser Representatives and Federal Covered Advisers.

13-503. Advertising Filing Requirement.

### **13-501. Dishonest or Unethical Practices by Broker-Dealers and Agents.**

A. Broker-Dealers. Each broker-dealer shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. Acts and practices, including but not limited to the following, are considered contrary to such standards and may constitute grounds for denial, suspension or revocation of registration, imposition of administrative fines, or such other action authorized by statute:

(1) Engaging in a pattern of unreasonable delays in the delivery of securities purchased by any of its customers and/or in the payment upon request of free credit balances reflecting completed transactions of its customers.

(2) Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account.

(3) Recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer.

(4) Executing a transaction on behalf of a customer without authorization to do so.

(5) Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of orders.

(6) Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account.

(7) Failing to segregate customers' free securities or securities held in safekeeping.

(8) Hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by the United States Securities and Exchange Commission ("SEC") rule.

(9) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit.

(10) Failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus.

(11) Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business.

(12) Offering to buy from or sell to any person any security at a stated price unless such broker-dealer is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such to buy or sell.

(13) Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless such broker-dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created or controlled by such broker-dealer, or by any person for whom he is acting or with whom he is associated in such distribution, or any person controlled by, controlling or under common control with such broker-dealer.

(14) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include but not be limited to:

(a) Effecting any transaction in a security which involves no change in the beneficial ownership thereof;

(b) Entering an order or orders for the purchase or sale of any security with the knowledge that an order or

orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; provided, however, nothing in this Subsection shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customers; or

(c) Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others;

(15) Guaranteeing a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer.

(16) Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation represents a bona fide bid for, or offer of, such security;. (17) Using any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure.

(18) Failing to disclose that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of such security, the existence of such control to such customer, and if such disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction.

(19) Failing to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group, or from a member participating in the distribution as an underwriter or selling group member.

(20) Failing or refusing to furnish a customer, upon reasonable request, information to which he is entitled, or to respond to a formal written request or complaint.

(21) Violating any rule of the Securities and Exchange Commission, or of a national securities exchange or national securities association or self regulatory association of which it is a member.

(22) Knowingly paying or splitting fees or commissions with unlicensed persons except as otherwise allowed by law.

(23) Failing to pay within thirty (30) days any fine, cost or assessment by the Securities Commissioner or any arbitration award which is not the subject of a motion to vacate or modify the award or when such a motion has been denied.

(24) Engaging in any dishonest or unethical sales practice while engaged in a telephone solicitation to include any of the following:

(a) Telephoning any person using threats, intimidation, or the use of profane or obscene language in connection with securities solicitations, recommendations, transactions or other brokerage account activity;

(b) Telephoning any person in this state after that individual has requested that they not be telephoned;

(c) Telephoning any person repeatedly in an annoying, abusive, or harassing manner, either individually or in concert with others;

(d) Telephoning any person in this state between the hours of 9:00 PM and 8:00 AM local time at the called person's location without that individual's prior consent; or

(e) Telephoning any person in this state without providing at the beginning of any telephone solicitation both the caller's identity and the identity of the broker-dealer or issuer. A telephone solicitation is defined as any telephone contact or electronic communication used to offer or sell securities, to gather information used in qualifying persons for the purpose of establishing a securities account or to make securities recommendations.

B. Agents. Each agent shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. Acts and practices, including but not limited to the following, are considered contrary to such standards and may constitute grounds for denial, suspension or revocation of registration, imposition of administrative fines, or such other action authorized by statute:

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(1) Engaging in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer.

(2) Effecting securities transaction not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction.

(3) Establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited.

(4) Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the agent represents.

(5) Dividing or otherwise splitting the agent's commissions, profits or other compensation from the purchase or sale of securities with any person not also registered as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control.

(6) Engaging in conduct specified in Subsection A (2), (3), (4), (5), (6), (9), (10), (14), (15), (16), (17), (20), (21), (22), (23) or (24).

C. Conduct Not Inclusive. The conduct set forth in Sections A and B above is not inclusive. Engaging in other conduct such as forgery, embezzlement, non-disclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices shall also be grounds for denial, suspension or revocation of registration, imposition of administrative fines, or such other action authorized by statute.

### **13-502. Dishonest or Unethical Practices by Investment Advisers, Investment Adviser Representatives and Federal Covered Advisers.**

A. Each investment adviser and investment adviser representative shall observe high standards of commercial honor and just and equitable principals of trade in the conduct of their business. Acts and practices, including but not limited to the following, are considered contrary to such standards and may constitute grounds for denial, suspension or revocation of registration, imposition of administrative fines, or such other action authorized by statute:

(1) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the adviser after reasonable examination of the client's records as may be provided to the adviser.

(2) Placing an order to purchase or sell a security for the account of a client without authority to do so.

(3) Placing an order to purchase or sell a security for the account of a client upon instruction of a third-party without first having obtained a written third-party trading authorization from the client.

(4) Exercising any discretionary power in placing an order for the purchase or sale of securities without first obtaining written discretionary authority unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of specified securities shall be executed, or both.

(5) Inducing trading in a client's account that is excessive in size and frequency in view of the financial resources, investment objectives and character of the account.

(6) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the adviser, or a financial institution engaged in the business of loaning funds or securities.

(7) Loaning money to a client unless the adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the adviser.

(8) Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the adviser, its representatives or any employees or misrepresenting the nature of the advisory services being offered or fees to be charged for such services or omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

(9) Providing a report or recommendation to any adviser client prepared by someone other than the adviser, without disclosing that fact except that this prohibition does not apply to a situation where the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service.

(10) Charging a client an advisory fee that is unreasonable.

(11) Failing to disclose to a client in writing before entering into or renewing an advisory agreement with that client any material conflict of interest relating to the adviser, its representatives or any of its employees, which could reasonably be expected to impair the rendering of unbiased and objective advice including:

(a) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

(b) Charging a client an advisory fee for rendering advice without disclosing that a commission for executing securities transactions pursuant to such advice will be received by the adviser, its representatives or its employees or that such advisory fee is being reduced by the amount of the commission earned by the adviser, its representatives or employees for the sale of securities to the client.

(12) Guaranteeing a client that a specific result will be achieved (gain or no loss) as a result of the advice which will be rendered.

(13) Publishing, circulating or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940.

(14) Disclosing the identity, affairs, or investments of any client to any third party unless required by law to do so, or unless consented to by the client.

(15) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the adviser has custody or possession of such securities or funds when the adviser's action is subject to and does not comply with the safekeeping requirements of Rule 206(4)-2 under the Investment Advisers Act of 1940.

(16) Entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee or the formula for computing the fee, the amount or the manner of calculation of the amount of the prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the adviser or its representatives and that no assignment of such contract shall be made by the adviser without the consent of the other party to the contract.

(17) Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information in violation of Section 204A of the Investment Advisers Act of 1940.

(18) Entering into, extending, or renewing any advisory contract which would violate section 205 of the Investment Advisers Act of 1940. This provision shall apply to all investment advisers registered or required to be registered under the South Carolina Uniform Securities Act of 2005, notwithstanding whether such investment adviser would be exempt from federal registration pursuant to section 203(b) of the Investment Advisers Act of 1940.

(19) Indicating, in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of the South Carolina Uniform Securities Act of 2005 or of the Investment Advisers Act of 1940, or any other practice that would violate section 215 of the Investment Advisers Act of 1940.

(20) Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative in contravention of section 206(4) of the Investment Advisers Act of 1940, notwithstanding the fact that such investment adviser is not registered or required to be registered under section 203 of the Investment Advisers Act of 1940.

(21) Employing any device, scheme, or artifice to defraud or engaging in any act, practice or course of business which operates or would operate as a fraud or deceit.

(22) Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of this act or any rule or order thereunder.

B. The conduct set forth above is not inclusive. Engaging in other conduct such as non-disclosure, incomplete disclosure, or deceptive practices shall also be grounds for denial, suspension or revocation of registration, imposition of administrative fines, or such other action authorized by statute.

C. The provisions of this rule apply to federal covered advisers to the extent that the conduct alleged is fraudulent, deceptive, or other conduct not excluded from regulation pursuant to the National Securities Markets

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Improvement Act of 1996 (Pub. L. 104-290). The federal statutory and regulatory provisions referenced in this Rule shall apply to investment advisers, investment adviser representatives and federal covered advisers, regardless of whether the federal provision limits its application to advisers subject to federal registration.

### 13-503. Advertising Filing Requirement.

Any prospectus, pamphlet, circular, form letter, advertisement, sales literature, or other advertising relating to a security or investment advice regarding securities, addressed or intended for distribution to prospective investors, including clients or prospective clients of a person registered as an investment adviser, under the South Carolina Uniform Securities Act of 2005, must be filed with the Securities Commissioner at least ten (10) business days prior to use in this State. The filing of an advertisement (or receipt thereof) does not constitute approval or a finding by the Securities Commissioner that the document is true, complete, or not misleading.

## ARTICLE 6

REG.

13-601. Financial Statements Submitted with an Application to Register Securities or used in a Prospectus.

13-602. Prospectus, Offering Circular, Exemption and Exception Filing Fees.

13-603. Consents to Service of Process.

### 13-601. Financial Statements Submitted with an Application to Register Securities or used in a Prospectus.

A. All financial statements submitted with an application to register securities or for inclusion in a Prospectus used in this State, except a Prospectus relating to a federal covered security, shall be certified by an Independent Public Accountant regularly engaged in business as such; provided, however (1) that interim statements prepared since the close of the last fiscal year shall not be required to be certified if prepared on a basis comparable to those certified, and (2) that financial statements approved by the South Carolina Department of Insurance or the United States Securities and Exchange Commission ("SEC") may be accepted by the Securities Commissioner in his discretion.

B. Where a company has been in business for less than one (1) year and submits one statement only which covers a period of less than one (1) year, such statement shall be certified.

C. A report signed by the Independent Public Accountant should accompany the statements.

D. Financial statements filed with an application for registration of securities shall be updated when necessary so that the Prospectus as finally approved and in definitive form shall contain statements as of a date not more than six (6) months prior to the date of the Prospectus.

E. A Prospectus relating to securities in registration should be amended or supplemented whenever necessary to reflect any material changes, but in any event at least once in any period of twelve (12) consecutive months, in order to bring financial data up to date. Failure of the registrant to do so shall be considered cause for suspension of registration. The Securities Commissioner shall have discretion to determine whether to require the reprinting of the entire Prospectus.

F. The Securities Commissioner by rule or order, may waive any or all of the provisions of this Order.

### 13-602. Prospectus, Offering Circular, Exemption and Exception Filing Fees.

A. Filing fees to accompany prospectus or offering circular.

(1) A filing fee of fifty (\$50.00) dollars shall accompany any Prospectus or Offering Circular amended subsequent to effectiveness of registration or filed for the purpose of maintaining registration or notice filing of the securities.

(2) A fee of one hundred (\$100.00) dollars shall accompany a request for a review by the Securities Commissioner of any preliminary or definitive Prospectus or Offering Circular for the purpose of obtaining an opinion on the eligibility of the securities for registration.

B. Fees to accompany a request for confirmation of the availability of an exemption or exception.

(1) A fee of one hundred fifty (\$150.00) dollars shall accompany the filing of a request for confirmation of the availability of an exemption under Section 35-1-201(7) of the South Carolina Uniform Securities Act of 2005, as amended.

(2) A fee of one hundred fifty (\$150.00) dollars shall accompany the filing of a request for confirmation of the availability of an exemption under Section 35-1-201 or 35-1-202 (other than Section 35-1-201(7)) or an exception under Section 35-1-102 of the South Carolina Uniform Securities Act of 2005, as amended.

### **13-603. Consents to Service of Process**

The filing of a Uniform Form U-2 constitutes compliance with Section 35-1-611(a) of the South Carolina Uniform Securities Act of 2005.

**Filed: January 5, 2006, 9:30 am**

Document No. 3051

## **DEPARTMENT OF CONSUMER AFFAIRS**

### **CHAPTER 28**

Statutory Authority: 1976 Code Section 37-7-101 et seq.  
Particularly Sections 37-7-112 and 37-7-121

## **28-700. Fees and Charges of Consumer Credit Counseling Organization Licensees**

### **Emergency Situation:**

The General Assembly passed legislation in 2005 requiring the licensing of credit counseling organizations and credit counselors. These organizations and counselors provide credit counseling services to consumers, which include: distributing funds to creditors; offering to improve credit scores, histories, or ratings; and/ or negotiating with creditors to reduce a consumer's obligations. The statute, under S.C. Code Section 37-7-112, requires the Department to set the fees a credit counseling organization can charge a consumer.

The Department of Consumer Affairs has found that an emergency exists requiring promulgation of a regulation pursuant to S.C. Code Sections 37-7-112 and 37-7-121 to set fees credit counseling organizations may charge consumers. The regulation is needed to implement fees licensees may charge consumers during the interim period between the effective date of S.C. Code Section 37-7-101 et seq., December 2, 2005, and passage of the proposed regulation by the General Assembly.

### **Text:**

#### **A. Definitions.**

1. Definitions shall be those contained in the Consumer Credit Counseling Act, S.C. Code Ann. Section 37-7-101 et. seq. and the following:

- a. "Fees and charges of licensees" means the amount of money the credit counseling organization licensee may charge to the consumer.

#### **B. Fees and Charges of Licensees.**

- 1. A licensee may not charge or receive from a consumer, directly or indirectly, a fee except the following:
  - a. an initial consultation fee, not to exceed twenty dollars for each consumer;

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- b. if the consumer enrolls in a DMP, a set-up fee, not to exceed thirty dollars;
- c. additional maintenance fees, not to exceed twenty-five dollars for each month;
- d. a reinstatement fee, not to exceed twenty-five dollars;
- e. a bankruptcy consultation fee, if applicable, not to exceed fifty dollars for each consumer.

2. The fees set out in (B)(1) above will be adjusted based on the Consumer Price Index as referenced in S.C. Code Section 37-7-109.

C. Records and account systems maintained in whole or in part by electronic data processing may be used in lieu of the books, files and records required by S.C. Code Sections 37-7-111 and 37-7-114 if they contain equivalent information and such information is accessible to the Department.

### **Statement of Need and Reasonableness:**

The statement of need and reasonableness was determined by staff analysis pursuant to S.C. Code Section 1-23-115(C)(1)-(3) and (9)-(11):

DESCRIPTION OF REGULATION: Fees and Charges of Consumer Credit Counseling Organization Licensees

Purpose: The proposed regulation will set the fees organizations licensed under 1976 Code Section 37-7-101 et seq. may charge consumers. Record keeping requirements are also included.

Legal Authority: 1976 Code Section 37-7-101 et seq., particularly Sections 37-7-112 and 37-7-121.

Plan for Implementation: Administrative.

### **DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:**

The regulation is intended to set the fees organizations licensed under S.C. Code Section 37-7-101 et seq. can charge consumers. Abuse has occurred in the industries covered by the Consumer Credit Counseling Act with respect to excessive consumer fees. The intent of setting fees is to protect the consumer.

Allowing licensees to keep records via electronic database should make it easier for them to comply with the record keeping requirements of S.C. Code Section 37-7-101 et seq.

### **DETERMINATION OF COSTS AND BENEFITS:**

Licensing fees assessed through S.C. Code Section 37-7-101 et seq. are at levels intended to offset the costs of administering the regulation.

### **UNCERTAINTIES OF ESTIMATES:**

Estimates are based on agency experience with similar industries. Should the number of filings vary greatly, estimates could change. However, since costs to the State should be covered by the licensing fees set in S.C. Code Section 37-7-101 et seq., impact should be minimal.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: None.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED: None.

Filed: January 8, 2006, 4:00 pm

Document No. 3049  
**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**  
**CHAPTER 30**

Statutory Authority: S.C. Code Sections 1-23-130(A), 48-39-50(E)

**Emergency Situation:**

Statement of Situation Requiring Immediate Promulgation  
of Regulatory Amendments Regarding Access to Coastal Islands  
Pursuant to S.C. Code Section 1-23-130(A)

The South Carolina General Assembly has made the following legislative findings:

The coastal zone is rich in a variety of natural, commercial, recreational and industrial resources of immediate and potential value to the present and future well-being of the State. S.C. Code Section 48-39-20(A).

The increasing and competing demands upon the lands and waters of our coastal zone occasioned by population growth and economic development, including requirements for industry, commerce, residential development, recreation, extraction of mineral resources and fossil fuels, transportation and navigation, waste disposal and harvesting of fish, shellfish and other living marine resources have resulted in the decline or loss of living marine resources, wildlife, nutrient-rich areas, permanent and adverse changes to ecological systems, decreasing open space for public use and shoreline erosion. S.C. Code Section 48-39-20(B).

The coastal zone and the fish, shellfish, other living marine resources and wildlife therein, may be ecologically fragile and consequently extremely vulnerable to destruction by man's alterations. S.C. Code Section 48-39-20(D).

Important ecological, cultural, natural, geological and scenic characteristics, industrial, economic and historical values in the coastal zone are being irretrievably damaged or lost by ill-planned development that threatens to destroy these values. S.C. Code Section 48-39-20(E).

The South Carolina General Assembly has stated, "Critical areas shall be used to provide the combination of uses which will insure the maximum benefit to the people, but not necessarily a combination of uses which will generate measurable maximum dollar benefits. As such, the use of a critical area for one or a combination of like uses to the exclusion of some or all other uses shall be consistent with the purposes of this chapter." S.C. Code Section 48-39-30(D).

The Department of Health and Environmental Control (Department) is charged with protecting the quality of South Carolina's environment and managing the state's important coastal resources.

The State of South Carolina has recognized the cultural, ecological and historical value of marsh islands. Marsh islands perform important ecological services including provision of homes for endangered species, resting grounds for migratory birds, and important habitat for many other terrestrial and marine species.

The Department is authorized by statute to regulate any alteration of the critical area of the coastal zone, including access to marsh islands.

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The Department has developed a regulatory program designed to accomplish its statutory mandate to protect the quality of the coastal environment. The Department's Regulation 30-12.N, Access to Small Islands, was a crucial component of the Department's regulatory program, but has been judicially declared invalid by the South Carolina Supreme Court because the test to determine whether an island is small has not been promulgated by regulation.

On April 14, 2005, the Board of Health and Environmental Control issued the following directive to the Department:

The Department of Health and Environmental Control is directed to draft a regulation for submittal to the General Assembly regarding access to marsh islands consistent with the intent of the federal and state Coastal Zone Management Acts, the state Pollution Control Act, the state Stormwater Management and Sediment Reduction Act and the federal Clean Water Act;

Such regulation shall include clearly defined terms and specific standards to be utilized in the evaluation of permit applications for bridges to islands, in light of the recent judicial decision regarding R. 30-12.N;

In drafting such regulation, the Department is directed to work with interested stakeholders to establish reasonable requirements....

The Department initiated the statutory process for amendment of R.30-1 and R.30-12 by publication of a Notice of Drafting in the *State Register* on April 29, 2005. The Department published a second Notice of Drafting on August 26, 2005, which clarified that all types of access to islands, not just bridging, would be addressed.

The Department created the Marsh Island Advisory Committee in order to receive input from interested stakeholders concerning reasonable criteria for access to marsh islands. The Marsh Island Advisory Committee is composed of six members representing a spectrum of diverse interests from the conservation and development communities.

The Marsh Island Advisory Committee met six times in Charleston on July 13, July 27, August 10, August 24, August 30 and September 13, 2005. The Marsh Island Advisory Committee's diligent efforts resulted in a proposed regulatory amendment to address access to marsh islands that is supported by all committee members.

Department staff presented proposed regulatory amendments to the Board of Health and Environmental Control at its meeting on October 6, 2005. The Marsh Island Advisory Committee endorsed and supported the regulatory amendments presented to the DHEC Board. The Board granted initial approval to publish a Notice of Proposed Regulation in the *State Register*, to provide for a public comment period, to conduct a staff informational forum, and to conduct a public hearing before the Board on January 12, 2006.

In the absence of legislative action on the regulatory amendments, the amendments are expected to become effective upon publication in the *State Register* on June 23, 2006.

The Department has pending applications for access to marsh islands which will likely become ripe for decision prior to the effective date of the regulatory amendments, and additional applications may be filed. The Department is required by law to act upon an application for a permit for access to a marsh island within ninety days after the filing of a complete application. S.C. Code Section 48-39-150(C), Regulation 30-4.C.

The regulatory amendments are necessary to fill the gap in the critical area regulations created when the Department's Regulation 30-12.N, Access to Small Islands, was declared invalid. The amendments provide more specific, protective and enforceable standards than currently exist for the management of coastal islands, which are important features of the South Carolina coast. The amendments add definitions, procedures and detailed project standards to be utilized in the evaluation of permits for access to islands to ensure consistent and effective

Department review of applications for access to islands. The amendments are necessary to protect important and unique features of the coastal landscape, add specificity and minimum development standards to the existing regulations, and enable Department staff to effectively administer the coastal regulatory program.

Delayed implementation of the amendments will cause irreparable harm to the State's coastal resources by allowing the development of projects for access to marsh islands which do not comply with the standards developed by the Marsh Island Advisory Committee, and endorsed by Department staff and the DHEC Board.

Delayed implementation of the amendments will impede the Department's ability to perform its statutory duties, including the duty to:

protect important ecological, cultural, natural, geological and scenic characteristics, industrial, economic and historical values in the coastal zone which are being irretrievably damaged or lost by ill-planned development that threatens to destroy these values. S.C. Code Section 48-39-20(E);

promote economic and social improvement of the citizens of this State and to encourage development of coastal resources in order to achieve such improvement with due consideration for the environment and within the framework of a coastal planning program that is designed to protect the sensitive and fragile areas from inappropriate development and provide adequate environmental safeguards with respect to the construction of facilities in the critical areas of the coastal zone. S.C. Code Section 48-39-30(B)(1);

protect and, where possible, to restore or enhance the resources of the State's coastal zone for this and succeeding generations. S.C. Code Section 48-39-30(B)(2);

formulate a comprehensive tidelands protection program. S.C. Code Section 48-39-30(B)(3).

S.C. Code Section 1-23-130(A) provides as follows:

...if a natural resources related agency finds that abnormal or unusual conditions, immediate need, or the state's best interest requires immediate promulgation of emergency regulations to protect or manage natural resources, the agency may file the regulation with the Legislative Council and a statement of the situation requiring immediate promulgation. The regulation becomes effective as of the time of filing.

At its meeting on October 6, 2005, the Board of Health and Environmental Control directed the Department to promulgate the proposed regulatory amendments as an emergency regulation pursuant to S.C. Code Section 1-23-130(A).

The Department is a natural resources related agency and finds that abnormal or unusual conditions, immediate need and the state's best interest require immediate promulgation of the attached emergency regulations to protect and manage natural resources.

### **Text of Emergency Regulation:**

#### **30-1. Statement of Policy.**

##### **D. Definitions:**

##### **(9) Bridge:**

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(a) Non-vehicular - bridges designed for use by pedestrians, golf carts or other maintenance vehicles, but not cars and trucks; are not docks; and can have a maximum clear width on the deck surface of six feet.

(b) Vehicular - bridges with a clear width on the deck surface of over six feet and designed to support traffic by cars and trucks.

(10) Coastal Island - an area of high ground above the critical area delineation that is separated from other high ground areas by coastal tidelands or waters. An island connected to the mainland or other island only by a causeway is also considered a coastal island. The purpose of this definition is to include all islands except those that are essentially mainland, i.e., those that already have publicly accessible bridges and/or causeways. The following islands shall not be deemed a coastal island subject to this section due to their large size and developed nature: Waites Island in Horry County; Pawleys Island in Georgetown County; Isle of Palms, Sullivans Island, Folly Island, Kiawah Island, Seabrook Island, Edisto Island, Daniel Island, Johns Island, James Island, Woodville Island, Slann Island and Wadmalaw Island in Charleston County; Edisto Beach in Colleton County; Harbor Island, Hunting Island, Fripp Island, Hilton Head Island, St. Helena Island, Port Royal Island, Ladies Island, Spring Island and Parris Island in Beaufort County.

### 30-12. Specific Project Standards for Tidelands and Coastal Waters.

N. Access to Coastal Islands. This section applies to applications for permits for bridges, docks, and other means of obtaining access to coastal islands.

#### (1) Purpose:

(a) South Carolina has several thousand coastal islands, including barrier islands, sea islands, back barrier islands and marsh hammocks. Almost all of these islands are surrounded by expanses of salt marsh, occasionally bordered by tidal creeks or rivers. Historically, few of these islands have been built upon or altered, and most have been protected by their remoteness and inaccessibility. In recent years, however, a trend toward greater potential for development of these islands has stimulated questions and concerns about the ecological significance of these islands. The South Carolina Department of Natural Resources conducted a field study of a number of non-barrier islands. Their report, *An Ecological Characterization of Coastal Hammock Islands*, December, 2004, has shown that these islands are unique ecosystems with diverse flora and fauna. That study recommends protection and buffering of important habitats and resources associated with these islands.

(b) Access to coastal islands by bridges or docks involves the placement of structures into critical area coastal tidelands and waters that are protected by the statute, the critical area regulations, and by the public trust doctrine.

(c) Construction of bridges within critical area tidelands and waters involves impacts on critical area coastal tidelands and coastal waters, including temporary damages to salt marsh and shellfish beds, temporary increased turbidity, permanent displacement of marshes by installation of pilings, and permanent shading of marsh. Shading impacts can include lowered productivity and destruction of marsh grasses. Bridge construction can also have impacts on the aesthetics of an area that attracts tourism and development based on the attractiveness of scenic coastal vistas.

#### (2) Eligibility to apply for a bridge permit.

(a) The decision on whether to issue or deny a permit for a bridge to a coastal island must be made with due consideration of the impacts to the public trust lands, critical area, coastal tidelands and coastal waters, weighed against the reasonable expectations of the owner of the coastal island. Giving due consideration to these factors, the Department has determined that some islands are too small or too far from upland to warrant the impacts on public resources of bridges to these islands, and thus no permit for a bridge shall be issued.

(b) Bridge permits, other than non-vehicular bridges for access by the general public, will not be issued in areas of special resource value unless they qualify under the special exceptions in R.30-12.N(11). These are the ACE Basin Taskforce Boundary Area, the North Inlet National Estuarine Research Reserve, and the Cape Romain National Wildlife Refuge.

(c) The Department will not consider applications for bridge access to islands less than one acre in size.

(d) The Department will only consider applications for bridges where the size of the island is one acre or greater, but less than two acres if the requirements of R.30-12.N(11) are met.

(e) The Department will, however, consider applications for bridge access in the following instances:

(i) Bridges not exceeding 15 feet in total width

(a) where the size of the island is two acres or greater, but less than or equal to three acres, and the distance from the upland and the length of the bridge does not exceed 200 feet;

(b) where the size of the island is greater than three acres but less than or equal to five acres and the distance from the upland and the length of the bridge does not exceed 300 feet;

(c) where the size of the island is greater than five acres, but less than or equal to ten acres and the distance from the upland and the length of the bridge does not exceed 500 feet.

(ii) Bridges may be constructed exceeding 15 feet in total width

(a) where the size of the island is greater than 10 acres, but less than or equal to 30 acres, and the distance from the upland and the length of the bridge does not exceed 500 feet;

(b) where the size of the island is greater than 30 acres and the distance from the upland and the length of the bridge does not exceed 1,500 feet.

(f) All measurements to coastal islands for the purpose of establishing whether an island may qualify for a bridge permit are taken from upland as defined in this section.

(i) Upland is:

(a) the naturally occurring mainland, and

(b) Waites Island in Horry County; Pawleys Island in Georgetown County; Isle of Palms, Sullivans Island, Folly Island, Kiawah Island, Seabrook Island, Edisto Island, Daniel Island, Johns Island, James Island, Woodville Island, Slann Island and Wadmalaw Island in Charleston County; Edisto Beach in Colleton County; Harbor Island, Hunting Island, Fripp Island, Hilton Head Island, St. Helena Island, Port Royal Island, Ladies Island, Spring Island and Parris Island in Beaufort County.

(ii) The length measurements for all proposed bridges will be taken from a current Department approved critical area line.

(g) In order to apply for a bridge permit, the applicant must submit a survey, produced and stamped by a registered surveyor licensed to practice in South Carolina, showing that the length of the proposed bridge will not exceed the lengths allowed in these regulations.

(3) Minimum Development Standards for Bridge Applications. Where the conditions set forth in R.30-12.N(2)(e) exist, the permit shall be issued or denied based on whether the owner of the island can demonstrate compliance with all applicable Department statutes and regulations, including the minimum development standards in the following sections.

(a) Docks.

(i) The following standards apply to docks in projects associated with applications for bridge access to coastal islands. The project standards in this section are in addition to the other Department standards applicable to docks.

(ii) The application for the project shall reflect that the applicant has eliminated 75 percent of the number of private residential docks allowed by the Department's critical area permitting regulations as they existed on

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September 1, 2005. The dock reduction shall be made binding on the land by a conservation easement meeting the requirements of R.30-12.N(5).

(iii) Docks longer than 500 feet over the critical area are prohibited. This is inclusive of pierheads, floats, ramps, mooring piles and other associated structures.

(iv) No boat lifts, davits or similar structures are allowed.

(v) Roofs are not allowed on private docks, but are allowed on community docks.

(vi) All docks proposed for an island must be shown on a dock master plan that is submitted with the bridge application.

(b) Density limits.

(i) The following density limits for residential units will apply:

(a) two units on islands greater than or equal to two acres, but less than three acres;

(b) three units on islands greater than or equal to three but less than six acres;

(c) one unit per two acres on islands greater than or equal to six acres but less than 10 acres.

(ii) If the applicable local ordinance is more restrictive, those more restrictive density limits will apply.

(c) Environmental Assessment.

(i) Applicants for permits must conduct an environmental assessment of the island. This assessment must list the presence of any of the following:

(a) federal threatened and endangered species,

(b) state threatened and endangered species,

(c) state species of concern, and

(d) all freshwater wetlands.

(ii) The applicant must submit a site plan that takes into consideration impact to wildlife habitats on the island.

(d) Freshwater wetlands.

(i) Direct impacts to freshwater wetlands on coastal islands 10 acres or less in size are prohibited.

(ii) For islands of more than 10 acres, no fill will be allowed in wetlands unless there is no feasible alternative.

(iii) For all freshwater wetlands on islands 10 acres or less and all protected wetlands on larger islands:

(a) the wetlands must be preserved and protected by a recorded conservation easement meeting the requirements of R.30-12.N(5);

(b) the wetlands must be buffered with an average 35 foot width undisturbed buffer, with a minimum allowable buffer width of 15 feet;

(c) buffers must also be protected by the same conservation easement as the wetland;

(d) a copy of the conservation easement must be supplied to the Department prior to issuance of the bridge construction placard.

(e) Navigable waters.

(i) New bridges to islands 10 acres or less shall not be allowed to cross waters that are navigable at mean low water.

(ii) New bridges shall be designed and constructed so as not to impede navigation.

(f) All bridges shall be the minimum possible size and height to accommodate the intended use, aligned to minimize environmental damage, and constructed of materials approved for marine applications.

(g) Stormwater.

(i) A stormwater management and sediment control plan for the vehicular bridge shall be submitted with the bridge permit application.

(a) This plan may require the over-treatment of runoff from associated bridge roadways to compensate for the lack of direct treatment of runoff from the bridge surface itself.

- (b) Where feasible, periodic vacuuming should be included.
- (c) The use of scupper drains should be limited as much as feasible.
- (ii) Stormwater management and sediment control plans for any development or construction on the island shall be submitted with the bridge permit application.
- (iii) Stormwater plans must meet the most stringent water quality standards applicable to coastal waters in South Carolina at the time of the application.
- (iv) For all projects on coastal islands, regardless of size, the first one and one-half inch of storm water runoff from the impervious portion of the property must be retained on site.
- (v) Storage may be accomplished through retention, detention or infiltration systems that are open to the surface, as appropriate for the specific site.
- (vi) The use of vegetated critical line buffers cannot be the sole method of stormwater treatment.
  
- (h) All streets, roads, driveways and paths on islands of 10 acres or less must be pervious paving, if paved.
  
- (i) Lighting.
  - (i) Lighting on bridges must be designed with the minimum illumination necessary to meet local, state, or federal requirements for safety and navigation.
  - (ii) Exterior lighting on the island must be designed and maintained to minimize impacts to wildlife, to avoid light pollution of the surrounding areas, and to protect the scenic integrity of the area.
    - (a) Any exterior lighting on the island must be shielded to shine downward to narrowly illuminate areas immediately adjacent to homes.
    - (b) Lights on docks will not be allowed, except where needed to protect public safety and in such cases the lights will be designed with the minimum illumination necessary to accomplish this goal and to avoid light pollution of the surrounding area.
  
- (j) All utilities servicing the island must be located within the footprint of the bridge and attached to the bridge if feasible, but must not be placed overhead.
  
- (k) In order to reduce the negative impacts of island development, the following coverage ratios, buffers and open space requirements must be met.
  - (i) With 10 percent or less impervious surface coverage and an engineer-designed stormwater management and sediment control plan, there is to be a 40-foot buffer along the critical line, and 25 percent of the island reserved as open space.
  - (ii) With between 10 percent and 20 percent impervious surface coverage and an engineer-designed stormwater management and sediment control plan, there is to be a 50-foot buffer along the critical line, and 35 percent of the island reserved as open space.
  - (iii) With 20 percent or more impervious surface coverage and an engineer-designed stormwater management and sediment control plan, there is to be a 75-foot buffer along the critical line and 45 percent of the island reserved as open space.
  - (iv) The following standards will be utilized in meeting these coverage ratios, buffers and open space requirements,
    - (a) Sixty percent of lawns must be counted as impervious surface coverage.
    - (b) Open space means parks and natural areas (including freshwater wetlands). Half of the open space requirement must be naturally vegetated.
    - (c) Buffer widths are average to allow the Department to consider any unusual geometry of the critical line. Minimum buffer width shall be 10 feet except for cases where the Department determines the minimum will create an unusual hardship.
    - (d) On any lot, a building envelope equal to the maximum impervious coverage area must be identified showing where the home site, lawn and any other impervious coverage will be located. Areas outside the envelope must remain undisturbed or be counted as impervious coverage.
    - (e) In order to accommodate for landowner view, one-third of the total buffer zone area, to be selected by the landowner, can be selectively pruned and landscaped with native plants, provided that no more than one

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contiguous area measuring a maximum of 75 feet in a horizontal distance parallel to the critical line occurs for each primary habitable structure.

(1) Selective pruning means the pruning shall not occur below four and one-half feet or above 25 feet.

(2) Selective pruning will be restricted to shrubs, vines and trees less than eight inches in diameter at breast height.

(3) Selective landscaping means that the understory and groundcover can be replaced only with native vegetation, including grass, which requires no chemical treatment for survival or maintenance.

(v) All buffers and other commitments under this section must be preserved and protected by a conservation easement meeting the requirements of R.30-12.N(5).

(l) Onsite Disposal Systems (OSDS).

(i) If the island is to be served by OSDS, all systems must include:

- (a) two-compartment septic tanks,
- (b) access manholes, and
- (c) effluent filters.

(ii) In addition to the standards in R.61-56 and R.61-57, each site must meet a horizontal setback requirement of 150 feet from any part of the OSDS to the Department critical line, and a vertical offset from the trench bottom to seasonal high water table of 12 inches. Applicants cannot place fill in order to qualify for this requirement.

(iii) All applications for a permit shall include provisions for sustainable operation and maintenance throughout the expected period of occupancy of the site, including, but not limited to the methods for pumping of the tank(s) when solid levels exceed 35 percent of the volume, but not less than every five years.

(iv) The applicant must provide proof of a conservation easement binding all lots on the island to comply with the provisions of this section prior to issuance of the bridge construction placard.

(v) The Department will deny a permit under R.61-56 for an OSDS on a coastal island with bridge access pursuant R.30-12.N if the requirements of this subsection are not met.

(m) All applications for bridge permits must contain proof that the project, including any intended development, is in compliance with the applicable zoning regulations.

(n) Vegetation and Landscaping.

(i) Applicants shall submit a site plan prepared by a licensed landscape architect that includes a tree survey of all trees above eight inches in diameter at breast height.

(ii) The plan shall depict the existence and proposed effect the project will have upon natural areas, view corridors and areas where new planting will occur.

(iii) The plan shall preserve existing vegetation to the extent reasonably feasible.

(iv) Unless significant existing vegetative buffers exist, the plan shall include new planting typically found on coastal islands, such as hard woods, palms and understory.

(4) Demonstration that project will not impose adverse impact upon the environment.

(a) With respect to an application for a bridge to an island that is of a size two acres or greater but less than 10 acres, the application's full compliance with the minimum development standards set forth in R.30-12.N(3) above will constitute a prima facie showing that all feasible measures and reasonable safeguards have been taken to comply with, and the meet the requirements of, South Carolina Code Section 48-39-150 and R.30-11.B.

(b) Providing bridge access to coastal islands that are 10 acres in size or greater causes substantial risk of:

- (i) interfering with and/or destroying significant natural habitat,
- (ii) interfering with the use of such islands by larger numbers of indigenous, threatened and/or endangered species, and
- (iii) significantly more use of, and adverse impact upon, tidelands, tidewaters, creeks and rivers.

(c) The provisions of R.30-12.N(3) are intended to describe the minimum development standards that an applicant must meet to obtain a permit for a bridge to a coastal island. Depending on the circumstances that exist with an application for a bridge to a coastal island of a size greater than 10 acres, there may be additional feasible measures or reasonable safeguards that the applicant can take to avoid adverse environmental impact. If so, the agency shall require the inclusion of these measures or safeguards as a condition for issuing the permit.

(d) The agency shall evaluate all impacts of the bridge and associated island development, including but not limited to, impacts on water quality, habitat, navigation, and viewsheds. Before a permit may be issued for a bridge to an island 10 acres in size or larger, the agency must make a specific finding that the project, considered as a whole, accomplishes each of the following:

- (i) The access and associated development sought by applicant requires a bridge over the critical area or is economically enhanced by such bridge.
- (ii) The applicant's completed project takes all reasonable measures to avoid:
  - (a) interfering with the natural flow of navigable water;
  - (b) adversely affecting the production of fish, shrimp, oysters, crabs, clams, any marine life, wildlife, or other natural resources in the area proximate to the island, including but not limited to water and oxygen supply;
  - (c) erosion, shoaling of channels or creation of stagnant water;
  - (d) interference with public access to tidal and submerged lands, navigable waters and beaches or other recreational coastal resources; and
  - (e) adverse impact upon the habitats for rare and endangered species of wildlife or irreplaceable historic and archeological sites of South Carolina's coastal zone.
- (iii) The applicant's completed project does not cause reduction in economic benefits to the area where the island is located, as compared with the benefits from preservation of an area in its unaltered state.
- (iv) The applicant's completed project includes:
  - (a) all reasonable safeguards to avoid adverse environmental impact;
  - (b) all feasible measures to avoid adverse environmental impact; and
  - (c) all reasonable measures to avoid adversely affecting the value and enjoyment of adjacent owners.

(e) In evaluating the impacts from a project, the following factors are evidence of feasible measures and reasonable safeguards to reduce adverse impact:

- (i) elimination of docks in particularly sensitive creeks and in important viewsheds;
- (ii) dock designs that reduce visual and other impacts;
- (iii) reduction of subdivision and development rights on the island accessed or other islands in the vicinity;
- (iv) vegetative buffers and building setbacks that exceed minimum standards;
- (v) protection of important habitat on the island;
- (vi) elimination of lighting;
- (vii) building height or design restrictions;
- (viii) use of a golf cart bridge or a pedestrian bridge of greater than six feet in clear width and which is not designed to carry cars and trucks; and
- (ix) removal of an existing causeway to restore natural flow.

(5) Conservation easements. Whenever this regulation specifies that a dock limitation, wetland or buffer preservation commitment, OSDS or other development limit or affirmative commitment must be accomplished by a conservation easement, the conservation easement must meet the requirements of this part.

(a) The conservation easements shall be prepared in accordance with the South Carolina Conservation Easements Act of 1991, S.C. Code Ann. §§ 27-8-10 through 27-8-120, and any amendments thereto (the "Act").

(b) The conservation easements must provide for permanent protection in perpetuity that will run with the title to the land.

(c) The conservation easement must incorporate by reference a recorded plat clearly delineating the buffers, wetlands and other protected areas, and these delineations must appear on all plats from which any portion of the

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property may be conveyed or financed. Once the conservation easement and associated plat are properly recorded in the chain of title, the failure to show the required delineations on a future plat shall not affect the validity of the conservation easement.

(d) The conservation easement must be held by the state or a land trust with a proven track record in the region and with the resources to enforce the terms of the easement. The conservation easement must provide for rights of enforcement by the Department and by any organization authorized to be a "holder" under the Act, provided that any legal action by a party other than the Department taken to enforce the terms of the conservation easement must include the Department as a party, and no such action may be settled without the written consent of the Department.

(e) Draft conservation easements must be submitted to the Department for review to determine compliance with the Act and the applicable limits and commitments related to the permit at issue, prior to issuance of the bridge permit.

(f) Prior to commencement of any work under a permit issued under this section, the recorded conservation easement must be filed with the Department, accompanied by an opinion of an attorney duly licensed to practice in South Carolina, certifying that the instrument has been duly executed by the fee simple owners of the property, that the individual signers of the instrument have full legal authority to execute the instrument, that the instrument has been properly recorded and indexed in the office of the county Register of Deeds, and that all holders of prior mortgages or other liens on the property have consented to the instrument and have subordinated their liens to the conservation easement.

(6) The owners of bridges are entitled to repair and maintain existing bridges as allowed under R.30-5.D and any applicable county or municipal regulations.

(7) If an existing bridge to a coastal island is destroyed or rendered unusable by natural causes or accidental destruction, the owner shall be entitled to a permit to replace the bridge with a like bridge that imposes no greater adverse impact on the critical area as the one destroyed.

(8) Permits for expansion of existing bridges will be processed as new bridges and must meet all applicable standards.

(9) Causeways.

(a) Permanent filling of critical areas for access to coastal islands is prohibited, except for fill associated with existing useable causeways.

(b) Existing useable causeways are defined as those causeways that have a drivable lane above the critical area.

(i) Permits for fill associated with existing usable causeways shall be granted only for minor fills that are minimized by use of containment structures to limit to the maximum extent feasible the square footage of fill, and where the fill would cause less damage to the critical area than would be caused by construction of a new bridge or other access structure.

(ii) Mitigation for critical area fill at a ratio of 2:1 will be required for fill associated with existing usable causeways.

(10) Non-vehicular bridges to be utilized by the general public on publicly owned lands for purely recreational, educational, or other institutional purposes will be exempt from all other sections of R.30-12.N and will be allowed by the Department provided there is no significant harm to coastal resources and the following minimum standards are met.

(a) The applicant must demonstrate that the structure is necessary for the overall planned use of the site.

(b) The structure must be aligned to minimize environmental impacts.

(11) Special Exceptions.

(a) Islands one acre or larger that do not qualify for a bridge permit under these regulations may apply for a special exception. To receive a special exception, the applicant shall present clear and convincing evidence that granting the bridge permit will serve an overriding public interest.

(b) For an application to meet the overriding public interest test, it must demonstrate by clear and convincing evidence that it will create overriding public benefits resulting from mitigation and diminished impacts to public trust resources compared with development that would likely occur without the bridge.

(c) All public benefits considered under this exception must be secured by a permanent conservation easement meeting the requirements of R.30-12.N(5) on all affected property.

(d) Impact reductions beyond the minimum standards in R.30-12.N(3) can take the form of:

- (i) permanent protection of habitat,
- (ii) major reductions in building density,
- (iii) major reductions in subdivision rights,
- (iv) major reductions in docks,
- (v) major increases in riparian buffers,
- (vi) other architectural and site design improvements, and
- (vii) minimization of bridge impacts to environmental and visual resources.

(12) Severability Clause. In the event that any portion of these regulations is construed by a court of competent jurisdiction to be invalid, or otherwise unenforceable, such determination shall in no manner affect the remaining portions of these regulations, and they shall remain in effect, as if such invalid portions were not originally a part of these regulations.

**Filed: December 24, 2005, 8:30 am**

Document No. 3048  
**DEPARTMENT OF INSURANCE**  
 CHAPTER 69

Statutory Authority: 1976 Code Sections 38-3-110, 38-9-180, 38-63-510 et seq., 1-23-110 et seq.

69-57.1. Recognition of the 2001 CSO Mortality Table for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits.

**Emergency Situation:**

The CSO Mortality Tables were last updated in South Carolina in 1980. Since that time, life expectancy has greatly increased, but the tables used by actuaries to generate reserve values and cash values do not reflect that fact. Consumers do not have the benefit of receiving potentially better rates on life insurance products. Forty-seven other states have adopted the new tables and two other states allow permissive use of the new tables. South Carolina is the only state that has not recognized the updated tables in some fashion. The insurance industry operates most efficiently for the consumer when there is uniformity of state regulation of insurance. Therefore, in an effort to allow the new tables to be used in South Carolina so as to provide the most current and best insurance products to consumers in South Carolina, the Department of Insurance is issuing this emergency regulation to allow regulated insurers to use the new CSO Mortality Tables. The 2001 CSO Tables are expected to be formally adopted upon approval of a Joint Resolution by the General Assembly in early 2006.

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### Text:

69-57.1. Recognition of the 2001 CSO Mortality Table for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits.

Section 1. Authority

Section 2. Purpose

Section 3. Definitions

Section 4. 2001 CSO Mortality Table

Section 5. Conditions

Section 6. Applicability of the 2001 CSO Mortality Table to South Carolina Insurance Regulation 69-57

Section 7. Gender-Blended Tables

Section 8. Separability

Section 9. Effective Date

Section 1. Authority

This regulation is promulgated by the Director of Insurance pursuant to South Carolina Code Sections 38-9-180 and 38-63-510 et seq. as well as Regulation 69-57, Valuation of Life Insurance Policies.

Section 2. Purpose

The purpose of this regulation is to recognize, permit and prescribe the use of the 2001 Commissioners Standard Ordinary (CSO) Mortality Table in accordance with South Carolina Code Section 38-9-180 and Section 38-63-510 et seq. as well Regulation 69-57, Valuation of Life Insurance Policies.

Section 3. Definitions

A. "2001 CSO Mortality Table" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the NAIC in December 2002. The 2001 CSO Mortality Table is included in the Proceedings of the NAIC (2nd Quarter 2002). Unless the context indicates otherwise, the "2001 CSO Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables.

B. "2001 CSO Mortality Table (F)" means that mortality table consisting of the rates of mortality for female lives from the 2001 CSO Mortality Table.

C. "2001 CSO Mortality Table (M)" means that mortality table consisting of the rates of mortality for male lives from the 2001 CSO Mortality Table.

D. "Composite mortality tables" means mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.

E. "Smoker and nonsmoker mortality tables" means mortality tables with separate rates of mortality for smokers and nonsmokers.

Section 4. 2001 CSO Mortality Table

A. At the election of the company for any one or more specified plans of insurance and subject to the conditions stated in this regulation, the 2001 CSO Mortality Table may be used as the minimum standard for policies issued on or after January 1, 2005 and before the date specified in Subsection B to which South Carolina Code Sections 38-9-180 and 38-63-510 et seq. and South Carolina Insurance Regulation 69-57 are applicable. If the company elects to use the 2001 CSO Mortality Table, it shall do so for both valuation and nonforfeiture purposes.

B. Subject to the conditions stated in this regulation, the 2001 CSO Mortality Table shall be used in determining minimum standards for policies issued on and after January 1, 2009, to which South Carolina Code Sections 38-9-180 and 38-63-510 et seq. and Regulation 69-57 are applicable.

C. The new minimum basis for the computation of values related to extended term benefits shall be the 2001 CSO Mortality Table, subject to the transition dates for use of the 2001 CSO Mortality Tables set forth in this section.

## Section 5. Conditions

A. For each plan of insurance with separate rates for smokers and nonsmokers an insurer may use:

- (1) Composite mortality tables to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits;
- (2) Smoker and nonsmoker mortality tables to determine the valuation net premiums and additional minimum reserves, if any, required by South Carolina Code Section 38-9-180 and use composite mortality tables to determine the basic minimum reserves, minimum cash surrender values and amounts of paid-up nonforfeiture benefits; or
- (3) Smoker and nonsmoker mortality to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits.

B. For plans of insurance without separate rates for smokers and nonsmokers the composite mortality tables shall be used.

C. For the purpose of determining minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits, the 2001 CSO Mortality Table may, at the option of the company for each plan of insurance, be used in its ultimate or select and ultimate form, subject to the restrictions of Section 6 and South Carolina Insurance Regulation 69-57 relative to use of the select and ultimate form.

D. When the 2001 CSO Mortality Table is the minimum reserve standard for any plan for a company, the actuarial opinion in the annual statement filed with the Director shall be based on an asset adequacy analysis as specified in South Carolina Insurance Regulation 69-52. A Director may exempt a company from this requirement if it only does business in this state and in no other state.

## Section 6. Applicability of the 2001 CSO Mortality Table to South Carolina Insurance Regulation 69-57

A. The 2001 CSO Mortality Table may be used in applying South Carolina Insurance Regulation 69-57 in the following manner, subject to the transition dates for use of the 2001 CSO Mortality Table in Section 4 of this regulation unless otherwise noted, the references in this section are to the South Carolina Insurance Regulation 69-57:

- (1) Section 3A(2)(b): The net level reserve premium is based on the ultimate mortality rates in the 2001 CSO Mortality Table.
- (2) Section 4B: All calculations are made using the 2001 CSO Mortality Rate, and, if elected, the optional minimum mortality standard for deficiency reserves stipulated in Section 6A(4) of this regulation. The value of " $qx+k+t-1$ " is the valuation mortality rate for deficiency reserves in policy year  $k+t$ , but using the unmodified select mortality rates if modified select mortality rates are used in the computation of deficiency reserves.
- (3) Section 5A: The 2001 CSO Mortality Table is the minimum standard for basic reserves.
- (4) Section 5B: The 2001 CSO Mortality Table is the minimum standard for deficiency reserves. If select mortality rates are used, they may be multiplied by X percent for durations in the first segment, subject to the conditions specified in Sections 5B(3)(a) to (i). In demonstrating compliance with those conditions, the demonstrations may not combine the results of tests that utilize the 1980 CSO Mortality Table with those tests that utilize the 2001 CSO Mortality Table, unless the combination is explicitly required by regulation or necessary to be in compliance with relevant Actuarial Standards of Practice.
- (5) Section 6C: The valuation mortality table used in determining the tabular cost of insurance shall be the ultimate mortality rates in the 2001 CSO Mortality Table.
- (6) Section 6E(4): The calculations specified in Section 6E shall use the ultimate mortality rates in the 2001 CSO Mortality Table.

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(7) Section 6F(4): The calculations specified in Section 6F shall use the ultimate mortality rates in the 2001 CSO Mortality Table.

(8) Section 6G(2): The calculations specified in Section 6G shall use the ultimate mortality rates in the 2001 CSO Mortality Table.

(9) Section 7A(1)(b): The one-year valuation premium shall be calculated using the ultimate mortality rates in the 2001 CSO Mortality Table.

B. Nothing in this section shall be construed to expand the applicability of South Carolina Insurance Regulation 69-57 to include life insurance policies exempted under Section 3A of South Carolina Insurance Regulation 69-57.

### **Section 7. Gender-Blended Tables**

A. For any ordinary life insurance policy delivered or issued for delivery in this state on and after January 1, 2005, that utilizes the same premium rates and charges for male and female lives or is issued in circumstances where applicable law does not permit distinctions on the basis of gender, a mortality table that is a blend of the 2001 CSO Mortality Table (M) and the 2001 CSO Mortality Table (F) may, at the option of the company for each plan of insurance, be substituted for the 2001 CSO Mortality Table for use in determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits. No change in minimum valuation standards is implied by this subsection of the regulation.

B. The company may choose from among the blended tables developed by the American Academy of Actuaries CSO Task Force and adopted by the NAIC in December 2002.

C. It shall not, in and of itself, be a violation of South Carolina Code of Laws Chapter 57 of Title 38 for an insurer to issue the same kind of policy of life insurance on both a sex-distinct and sex-neutral basis.

### **Section 8. Separability**

If any provision of this regulation or its application to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of the provision to other persons or circumstances shall not be affected.

### **Section 9. Effective Date**

This regulation shall be effective January 1, 2005.

### **Statement of Need and Reasonableness:**

The statement of need and reasonableness was determined to be the necessity of timely recognition and adoption of the 2001 Commissioners Standard Ordinary (CSO) Mortality Table in accordance with South Carolina Code Section 38-9-180 and Section 38-63-510 et seq. as well as Regulation 69-57, Valuation of Life Insurance Policies. The basis for this regulation are tables developed by the American Academy of Actuaries and the National Association of Insurance Commissioners.

Document No. 3009  
**CLEMSON UNIVERSITY**  
**STATE LIVESTOCK-POULTRY HEALTH COMMISSION**  
 CHAPTER 27  
 Statutory authority: 1976 Code Section 47-4-30 and 47-17-130

R.27-1023 State Meat Inspection Regulation

**Synopsis:**

These regulations are being promulgated to modernize, clarify and update existing regulations which govern, to the extent authorized by S. C. Code, Title 47, Chapter 4, the inspection of meat and meat food products produced for intrastate commerce. These updated regulations are necessary to comply with the Federal Meat Inspection Act (21USCA 661, Section 301) which established Federal-State Cooperative Meat Inspection Programs. This is a grant program with equal federal-state funding. A cooperating state is required to adopt regulations "at least equal to" those adopted by the federal government. This regulation will, in effect, adopt the current Federal Meat Inspection Regulations with some minor exceptions for some state specific requirements. The Notice of Drafting was published in the State Register on August 26, 2005.

**Instructions:**

Replace R27-1023 with the following amendment.

**Text:**

R.27-1023 State Meat Inspection Regulation

A. Definitions.

1. *Commission* means the State Livestock-Poultry Health Commission, Clemson University.
2. *Director* means the Director, Livestock-Poultry Health Programs, Clemson University.
3. *Custom Processor* means the custom preparation by any person of carcasses, parts thereof, meat or meat food products derived from the slaughter by any individual of cattle, sheep, swine or goats of his own raising or from game animals, delivered by the owner thereof for such custom preparation and transportation in commerce of such custom prepared article, exclusively for the use in the household by the owner and members of the owners household and the owners non-paying guests and employees in an establishment permitted by the State Meat Inspection Department for that purpose.

B. Permit required; fee; application; refusal, revocation or suspension.

1. Custom processors shall secure a permit from the Commission.
2. The permit fee is twenty-five dollars (\$25.00) annually or for part of a year. The permit year is July 1 to June 30. The fee must be retained by the Commission. The Commission by regulation may increase the fee to not more than fifty dollars (\$50.00).
3. The Commission, for cause, may refuse to grant a permit, may revoke or modify a permit, or assess a civil penalty in accordance with Section 47-4-130, South Carolina Code of Laws (1976) as amended.

C. Adoption of Federal Meat Inspection Regulations.

The United States Department of Agriculture, Food Safety and Inspection Service, Meat Inspection Regulations, 9 CFR, Chapter III, Subchapter A, Parts 300-320, 325, 329, 335, 352 and 354, and Subchapter E, Parts 416-417, 424, 430, 441 and 500 and all changes thereto in effect as of January 1, 2006 are hereby adopted as the State Meat Inspection Regulations, with exceptions as noted below.

## 62 FINAL REGULATIONS

### D. Exceptions to the Federal Meat Inspection Regulations.

1. Subchapter A, Part 303 – Exemptions, Section 303.1(a)(2). The provisions of this section related to custom slaughter of livestock do not apply. Custom slaughtering is not a specified exemption in the State Meat and Meat Foods Regulations and Inspection Law of 1967.

2. Subchapter A, Part 307, Section 307.5(a) – Overtime Inspection Service. Fees and charges for overtime inspection service will be established, as required, by the Commission.

3. Subchapter A, Part 307, Section 307.5(b) – Holiday Inspection Service. State holidays as designated by the State Budget and Control Board will be utilized by the state inspection program.

4. Subchapter A, Part 312 – Official Marks, Devices and Certificates. Official state marks, devices and certificates of inspection will be utilized by the state inspection program.

5. Subchapter A, Part 352, Section 352.5 – Holiday and Overtime Inspection Services. Fees and charges for overtime and state holiday inspection services will be established, as required by the Commission.

6. Subchapter A, Part 352, Section 352.7 – Marking Inspected Products. Official state marks, devices and certificates of inspection will be utilized by the state inspection program.

E. In addition to temporary suspension in whole or in part of inspection services, as provided for in this regulation, the Director may, when he determines that the operator of any official establishment or any subsidiary therein, acting within the scope of his office, employment or agency, has threatened to forcible assault or has forcibly assaulted, intimidated, harassed or interfered with any program employees in or on account of his official duties under the law, assess a civil penalty in accordance with Section 47-4-130(b), S.C. Code of Laws, (1976) as amended.

F. The complete text of these regulations is available for review at the Meat-Poultry Inspection Department, Livestock-Poultry Health Programs, Clemson University.

Document No. 3010

**CLEMSON UNIVERSITY**

**STATE LIVESTOCK-POULTRY HEALTH COMMISSION**

**CHAPTER 27**

Statutory Authority: 1976 Code Section 47-4-30, 47-19-30, and 47-19-170

R 27-1022 State Poultry Regulations

### **Synopsis:**

These regulations are being promulgated to modernize, clarify and update existing regulations which govern, to the extent authorized by S.C. Code, Title 47, Chapter 4, the inspection of poultry products produced for intrastate commerce. These updated regulations are necessary to comply with the federal Poultry Products Inspection Act (21USCA 454, Section 5) which establishes Federal-State Cooperative Poultry Inspection Programs. This is a grant program with equal federal-state funding. A cooperating state is required to adopt regulations “at least equal to” those adopted by the federal government. This regulation will, in effect, adopt the current Federal Poultry Products Inspection Regulations with some minor exceptions for some state specific requirements. The Notice of Drafting was published in the State Register on August 26, 2005.

**Instructions:**

Replace R27-1022 with the following:

**Text:**

## R.27-1022 – State Poultry Inspection Regulation

## A. Definitions.

1. *Commission* means the State Livestock-Poultry Health Commission, Clemson University.
2. *Director* means the Director, Livestock-Poultry Health Programs, Clemson University.

## B. Adoption of Federal Poultry Products Regulations.

The United States Department of Agriculture, Food Safety and Inspection Service, Poultry Products Inspection Regulations, 9 CFR, Chapter III, Subchapter A, Parts 362 and 381 and Subchapter E. Parts 416-417, 424, 430, 441 and 500 and all changes thereto in effect as of January 1, 2006 are hereby adopted as the State Poultry Inspection Regulations, with exception as noted below.

## C. Exceptions to the Federal Poultry Products Inspection Regulations.

- (1) Subchapter A, Part 362, Voluntary Poultry Inspection Regulations, Section 362.5. Fees and charges for voluntary inspection services will be established, as required, by the Commission.
- (2) Subchapter A, Part 381, Subpart G, Facilities for Inspection, Section 381.38. State holidays as designated by the State Budget and Control Board will be utilized by the state inspection program
- (3) Subchapter A, Part 381, Subpart G, Facilities for Inspection, Section 381.39. Fees and charges for overtime and holiday inspection services will be established, as required, by the Commission.
- (4) Subchapter A, Part 381, Subpart M, Official Marks, Devices and Certificates. Official state marks, devices and certificates of inspection will be utilized by the state inspection program.

D. The complete text of these regulations is available for review at the Meat-Poultry Inspection Department, Livestock-Poultry Health Programs, Clemson University.