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# SOUTH CAROLINA STATE REGISTER

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of the  
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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.

## **2010 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	1/8	2/12	3/12	4/9	5/14	6/11	7/9	8/13	9/10	10/8	11/12	12/10
Publishing Date	1/22	2/26	3/26	4/23	5/28	6/25	7/23	8/27	9/24	10/22	11/26	12/24

## **REPRODUCING OFFICIAL DOCUMENTS**

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## **PUBLIC INSPECTION OF DOCUMENTS**

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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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DOC. NO.	RAT. NO.	FINAL ISSUE	SUBJECT	EXP. DATE	AGENCY
4043		SR34-2	Amend and Add Regulations to Chapter 67 to Reflect Changes in Title 42 Necessitated by the Approval of Act 111 on June 25, 2007	1/13/10	Workers' Compensation Commission
4054		SR34-3	Registration of Immigration Assistance Services	2/22/10	LLR
4055		SR34-3	Illegal Aliens and Private Employment	2/22/10	LLR
4058		SR34-3	Insurance Holding Company Systems	3/08/10	Department of Insurance
4059		SR34-3	South Carolina Reinsurance Facility Recoupment	3/08/10	Department of Insurance
4060		SR34-3	Life Insurance Disclosure	3/08/10	Department of Insurance
4061		SR34-3	Valuation of Investments	3/08/10	Department of Insurance
4068		SR34-4	Funeral Service Practice Act	4/08/10	Board of Funeral Service
4066		SR34-5	Long Term Care Insurance	4/21/10	Department of Insurance
4063		SR34-5	Workers' Compensation Insurance and Use of Leased Vehicles	5/12/10	Public Service Commission
4070	R175	SR34-5	Air Pollution Control Regulations and Standards	5/12/10	Department of Health and Envir Control
4083		SR34-5	Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities	5/12/10	Department of Insurance
4088		SR34-5	Annuity and Deposit Fund Disclosure	5/12/10	Department of Insurance
4080	R177	SR34-5	Hazardous Waste Management	5/12/10	Department of Health and Envir Control
4069	R165	SR34-4	Species or Subspecies of Non-game Wildlife	5/12/10	Department of Natural Resources
4085	R176	SR34-5	Air Pollution Control Regulations and Standards	5/12/10	Department of Health and Envir Control
4090	R155	SR34-4	Seasons, Limits, Methods of Take and Special Use Restrictions on WMA's; Turkey Hunting Rules and Seasons	5/12/10	Department of Natural Resources
4091		SR34-5	Seeds	5/12/10	Department of Agriculture
4073		SR34-5	Definitions for Charter Bus, Equipped to Carry and Passenger	5/12/10	Public Service Commission
4078	R153	SR34-4	Uniform Real Property Recording Act	5/12/10	Secretary of State
4105	R150	SR34-4	Citrus Greening Quarantine	5/12/10	Clemson University-State Crop Pest Comm.
4106	R151	SR34-4	Phytophthora ramorum Quarantine	5/12/10	Clemson University-State Crop Pest Comm.
4097		SR34-5	Continuing Insurance Education	5/12/10	Department of Insurance
4098		SR34-5	Annual Audited Financial Reporting Regulation	5/12/10	Department of Insurance
4099		SR34-5	Dates for Payment of Annual License Fees/Appointment Fee for Insurance Agents Brokers, Adjusters, Agencies, and Motor Vehicle Damage Appraisers	5/12/10	Department of Insurance
4081		SR34-5	Athletic Trainers	5/14/10	Department of Health and Envir Control
4101			Practice of Architecture; Increased Use of Electronic Documents	5/21/10	Board of Architectural Examiners
4103			Apprentice Salespersons	5/21/10	Manufactured Housing Board
4100			Firm Registration, Continuing Professional Education and Professional Standards	5/21/10	Board of Accountancy
4102			Portable Fire Extinguishers and Fixed Fire Extinguishing Systems	5/26/10	LLR - Office of State Fire Marshal
4114			Inspectors - Registration, Fees and Disciplinary Procedure	5/26/10	Building Codes Council
4110			Regulation of Real Property Owned and Leased by the Dept.	5/27/10	Department of Natural Resources
4116			South Carolina Virtual School Program	5/28/10	State Board of Education
4117			Requirements for Additional Areas of Certification	5/28/10	State Board of Education
4108			Standards for Licensing Community Residential Care Facilities	5/30/10	Department of Health and Envir Control
4121			Agents and Agency Licenses	6/01/10	Department of Insurance
4075			Requirements of Licensure in the Field of Cosmetology	6/01/10	Board of Cosmetology
4107			Infectious Waste Management Regulations	6/02/10	Department of Health and Envir Control
4077			Premises	6/20/10	Alcoholic Beverages, Beer and Wine
<b>Committee Requested Withdrawal</b>					
4022			Riverbanks Parks Commission	Tolled	Riverbanks Parks Commission
<b>Resolution Introduced to Disapprove</b>					
4014			Environmental Protection Fees	Tolled	Department of Health and Envir Control
4015			Environmental Protection Fees	Tolled	Department of Health and Envir Control
4067			Law Enforcement Officer and E-911 Officer Training & Certification	Tolled	S.C. Criminal Justice Academy
4109			Child Support Guidelines	Tolled	Department of Social Services
<b>Permanently Withdrawn</b>					
4072			Central Fill Pharmacies		Board of Pharmacy

## 2 COMMITTEE LIST OF REGULATIONS SUBMITTED TO GENERAL ASSEMBLY

In order by General Assembly review expiration date  
 The history, status, and full text of these regulations are available on the  
 South Carolina General Assembly Home Page: <http://www.scstatehouse.gov/regnsrch.htm>

DOC. No.	SUBJECT	HOUSE COMMITTEE	SENATE COMMITTEE
4043	Amend and Add Regulations to Chapter 67 to Reflect Changes in Title 42 Necessitated by the Approval of Act 111 on June 25, 2007	Labor, Commerce and Industry	Judiciary
4054	Registration of Immigration Assistance Services	Labor, Commerce and Industry	Labor, Commerce and Industry
4055	Illegal Aliens and Private Employment	Judiciary	Labor, Commerce and Industry
4058	Insurance Holding Company Systems	Labor, Commerce and Industry	Banking and Insurance
4059	South Carolina Reinsurance Facility Recoupment	Labor, Commerce and Industry	Banking and Insurance
4060	Life Insurance Disclosure	Labor, Commerce and Industry	Banking and Insurance
4061	Valuation of Investments	Labor, Commerce and Industry	Banking and Insurance
4068	Funeral Service Practice Act	Labor, Commerce and Industry	Judiciary
4066	Long Term Care Insurance	Labor, Commerce and Industry	Banking and Insurance
4063	Workers' Compensation Insurance and Use of Leased Vehicles	Labor, Commerce and Industry	Judiciary
4070	Air Pollution Control Regulations and Standards	Agriculture and Natural Resources	Medical Affairs
4083	Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities	Labor, Commerce and Industry	Banking and Insurance
4088	Annuity and Deposit Fund Disclosure	Labor, Commerce and Industry	Banking and Insurance
4080	Hazardous Waste Management	Agriculture and Natural Resources	Medical Affairs
4069	Species or Subspecies of Non-game Wildlife	Agriculture and Natural Resources	Fish, Game and Forestry
4085	Air Pollution Control Regulations and Standards	Agriculture and Natural Resources	Medical Affairs
4090	Seasons, Limits, Methods of Take and Special Use Restrictions on WMA's; Turkey Hunting Rules and Seasons	Agriculture and Natural Resources	Fish, Game and Forestry
4091	Seeds	Agriculture and Natural Resources	Agriculture and Natural Resources
4073	Definitions for Charter Bus, Equipped to Carry and Passenger	Labor, Commerce and Industry	Judiciary
4078	Uniform Real Property Recording Act	Judiciary	Judiciary
4105	Citrus Greening Quarantine	Agriculture and Natural Resources	Agriculture and Natural Resources
4106	Phytophthora ramorum Quarantine	Agriculture and Natural Resources	Agriculture and Natural Resources
4097	Continuing Insurance Education	Labor, Commerce and Industry	Banking and Insurance
4098	Annual Audited Financial Reporting Regulation	Labor, Commerce and Industry	Banking and Insurance
4099	Dates for Payment of Annual License Fees/Appointment Fees for Insurance Agents, Brokers, Adjusters, Agencies, and Motor Vehicle Damage Appraisers	Labor, Commerce and Industry	Banking and Insurance
4081	Athletic Trainers	Medical, Military, Pub & Mun Affairs	Medical Affairs
4101	Practice of Architecture; Increased Use of Electronic Documents	Labor, Commerce and Industry	Labor, Commerce and Industry
4103	Apprentice Salespersons	Labor, Commerce and Industry	Labor, Commerce and Industry
4100	Firm Registration, Continuing Professional Education and Professional Standards	Labor, Commerce and Industry	Labor, Commerce and Industry
4102	Portable Fire Extinguishers and Fixed Fire Extinguishing Systems	Labor, Commerce and Industry	Labor, Commerce and Industry
4114	Inspectors - Registration, Fees and Disciplinary Procedure	Labor, Commerce and Industry	Labor, Commerce and Industry
4110	Regulation of Real Property Owned and Leased by the Dept.	Agriculture and Natural Resources	Fish, Game and Forestry
4116	South Carolina Virtual School Program	Education	Education
4117	Requirements for Additional Areas of Certification	Education	Education
4108	Standards for Licensing Community Residential Care Facilities	Medical, Military, Pub & Mun Affairs	Medical Affairs
4121	Agents and Agency Licenses	Labor, Commerce and Industry	Banking and Insurance
4075	Requirements of Licensure in the Field of Cosmetology	Medical, Military, Pub & Mun Affairs	Labor, Commerce and Industry
4107	Infectious Waste Management Regulations	Agriculture and Natural Resources	Medical Affairs
4077	Premises	Judiciary	Judiciary
<b>Committee Requested Withdrawal</b>			
4022	Riverbanks Parks Commission	Agriculture and Natural Resources	Fish, Game and Forestry
<b>Resolution Introduced to Disapprove</b>			
4014	Environmental Protection Fees	Agriculture and Natural Resources	Medical Affairs
4015	Environmental Protection Fees	Agriculture and Natural Resources	Medical Affairs
4067	Law Enforcement Officer and E-911 Officer Training & Certification	Judiciary	Judiciary
4109	Child Support Guidelines	Judiciary	Judiciary
<b>Permanently Withdrawn</b>			
4072	Central Fill Pharmacies	Medical, Military, Pub & Mun Affairs	Medical Affairs

**Executive Order No. 2010-09**

**WHEREAS**, the United States Congress enacted the Workforce Investment Act of 1998 (WIA), Public Law No. 105-220, “to provide workforce investment activities, through statewide and local workforce investment systems, that increase the employment, retention, and earnings of participants, and increase occupational skill attainment by participants, and, as a result, improve the quality of the workforce, reduce welfare dependency, and enhance the productivity and competitiveness of the Nation;”

**WHEREAS**, Section 111 of WIA authorizes a governor of a State to designate a State agency to serve as the State entity responsible for developing the State Workforce Investment Plan and administering other statewide WIA activities, including, but not limited to, those described in Sections 111 and 112 of WIA;

**WHEREAS**, pursuant to Executive Order 2005-09, I designated the South Carolina Department of Commerce as the State entity responsible for administering the State Workforce Investment Plan in South Carolina to increase accountability and better coordinate the State Workforce Investment Plan with the state’s economic development activities;

**WHEREAS**, the Trade Adjustment Assistance (TAA) program of the Trade Act of 1974, as amended by the Trade and Globalization Adjustment Assistance Act of 2009 (Division B, Title I, Subtitle I of the American Recovery and Re-Investment Act of 2009, Public Law No. 111-5 (enacted on February 17, 2009)), requires a governor of a state to ensure rapid response assistance of core services under WIA to employees terminated from their employment who are entitled to assistance under the Trade Act;

**WHEREAS**, pursuant to Executive Order 2007-12, I transferred the administration of the TAA program to the South Carolina Department of Commerce to consolidate TAA and WIA activities for better coordination between available workers and job opportunities in South Carolina;

**WHEREAS**, on March 30, 2010, I signed into law House Bill 3442, R. 159, which, among other things, created the South Carolina Department of Employment and Workforce as the successor agency to the South Carolina Employment Security Commission and transferred the administration of the State Workforce Investment Plan to the Department of Employment and Workforce;

**WHEREAS**, the Department of Employment and Workforce, as a successor agency to the Employment Security Commission, is an entity eligible to develop and administer the State Workforce Investment Plan pursuant to Section 111(e) of WIA; and

**WHEREAS**, continued consolidation of WIA and TAA activities is needed to ensure better coordination between available workers and job opportunities in South Carolina.

**NOW THEREFORE**, pursuant to Section 111 of WIA, I designate the Department of Employment and Workforce as the entity responsible for the administration of WIA and TAA activities and for carrying out all functions necessary to comply with WIA and the Trade Act of 1974, as amended by the Trade and Globalization Adjustment Assistance Act of 2009;

#### **4 EXECUTIVE ORDERS**

**FURTHER**, I direct the Department of Commerce, the Employment Security Commission, and the Department of Employment and Workforce to work together openly and cooperatively to ensure a successful transition of the WIA and TAA programs; and

**FURTHER**, I rescind Executive Orders 2005-09 and 2007-12.

This Order shall take effect May 3, 2010.

**GIVEN UNDER MY HAND AND THE GREAT  
SEAL OF THE STATE OF SOUTH CAROLINA,  
THIS 30th DAY OF APRIL 2010.**

**MARK SANFORD**  
Governor

**BUDGET AND CONTROL BOARD  
OFFICE OF RESEARCH AND STATISTICS**

**NOTICE**

Pursuant to the South Carolina Code of Laws, Section 15-41-30 requires the Economic Research Section of the Office of Research and Statistics of the State Budget and Control Board to adjust each dollar amount in subsection (A), items (1) through (14), by the change in the Southeastern Consumer Price Index, All Urban Consumers, as published by the U.S. Department of Labor Statistics, for the most recent year ending immediately before January first preceding July first. We computed the change in the index as the change in the average value of the index for the period from January 1, 2009 through December 31, 2009 compared to the average value of the index for the period from January 1, 2006 through December 31, 2006. This percentage change was 6.8 percent. Each dollar amount that represents this change has been rounded to the nearest twenty-five dollars as required by law. I have enclosed a table for you that represents the changes that should be made to each dollar amount in Section 15-41-30(A)(1) through (14).

Section 15-41-30. Property Exempt from Attachment, Levy, and Sales.

Amount Specified	Adjusted for
Subsection as of May 22, 2008	Inflation 1/

1	\$50,000	\$53,375
\$100,000	\$106,750	
2	\$5,000	\$5,350
3	\$4,000	\$4,275
4	\$1,000	\$1,075
5	\$5,000	\$5,350
6	\$1,500	\$1,600
7	\$5,000	\$5,350
8	Unspecified	
9	\$4,000	\$4,275
10	Unspecified	
11	Unspecified	
12	Unspecified	
13	Unspecified	
14	Unspecified	

Notes: All calculations made by the Economic Research Section of the Office of Research and Statistics of the State Budget and Control Board.

1/ Dollar amounts are adjusted by the change in the Southeastern Consumer Price Index, All Urban Consumers, for the most recent year ending immediately before January first preceding July first, and rounded to the nearest twenty-five dollars (Section 15-41-30 (B)).

Sources: U.S. Department of Labor, Bureau of Labor Statistics; Legislative Printing and Information Technology Systems (Act 225 of 2007, H.B.3816).

## 6 NOTICES

### BUILDING CODES COUNCIL

#### NOTICE OF GENERAL PUBLIC INTEREST

##### Adoption and Implementation of Building Codes

Notice is hereby given that, in accordance with Section 6-9-40 of the 1976 Code of Laws of South Carolina, as amended, the Department of Labor, Licensing and Regulation, South Carolina Building Codes Council has voted to adopt the International Building Code, 2009 edition, with modifications, no appendices; the International Residential Code, 2009 edition, with modifications, no appendices; the International Fire Code, 2009 edition, with modifications, no appendices; the International Fuel Gas Code, 2009 edition, with modifications, no appendices; the International Plumbing Code, 2009 edition, unmodified, no appendices; and the International Mechanical Code, 2009 edition, unmodified, no appendices, as modified below:

1. 2009 International Building Code, no appendices, with modifications as follows:

Section: 403.2.1 Reduction in fire-resistance rating. – Deleted without substitution.

Section: 706.3 Materials. – The Exception was deleted without substitution.

Table: 706.4 Fire Wall Resistance Ratings. – Footnote (a) was deleted without substitution. Change reference to footnote (b) to footnote (a).

Section: 903.2.7 Group M. – Language was added to condition number 4 to specify a maximum square footage for nonsprinkled space in a group M occupancy used for the display and sale of upholstered furniture. The section now reads:

4. A group M occupancy where a fire area that exceeds 2,500 square feet is used for the display and sale of upholstered furniture.

Section: 1014.2. Egress through intervening spaces. – Deleted and replaced with substitute language. The section now reads:

Means of egress shall consist of continuous and unobstructed paths of travel to the exterior of a building. Means of egress shall not be permitted through kitchens, closets, restrooms and similar areas nor through adjacent tenant spaces.

Exception: Means of egress shall be permitted through a kitchen area serving adjoining rooms constituting part of the same dwelling unit or guest room. When unusually hazardous conditions exist, the building official may require additional means of egress to assure the safety of the occupants.

2. 2009 International Residential Code, no appendices, with modifications as follows:

Table: R302.1 Exterior Walls. – Reduce the minimum fire separation distance in the table. The modified Table now appears as:

Table R302.1 – Exterior Walls

Exterior Wall Element		Minimum Fire-Resistance Rating	Minimum Fire Separation Distance
Walls	(Fire-resistance rated)	1 hour-tested in accordance with ASTM E 119 or UL 263 with Exposure to both sides	<3 feet
	(Not fire-resistance rated)	0-hours	>3 feet
Projections	(Fire-resistance rated)	1-hour on the underside	<2 feet
	(Not fire-resistance rated)	0-hours	>3 feet
Openings	Not allowed	N/A	<3 feet
	25% maximum of wall area	0-hours	3 feet
	Unlimited	0-hours	5 feet
Penetrations	All	Comply with Section R317.3	<5 feet
		None required	5 feet

Figure: R307.1 Minimum Fixture Clearances. – Change the minimum dimension for the side clearance between bathtubs and water closets and bidets from 15 inches to 12 inches.

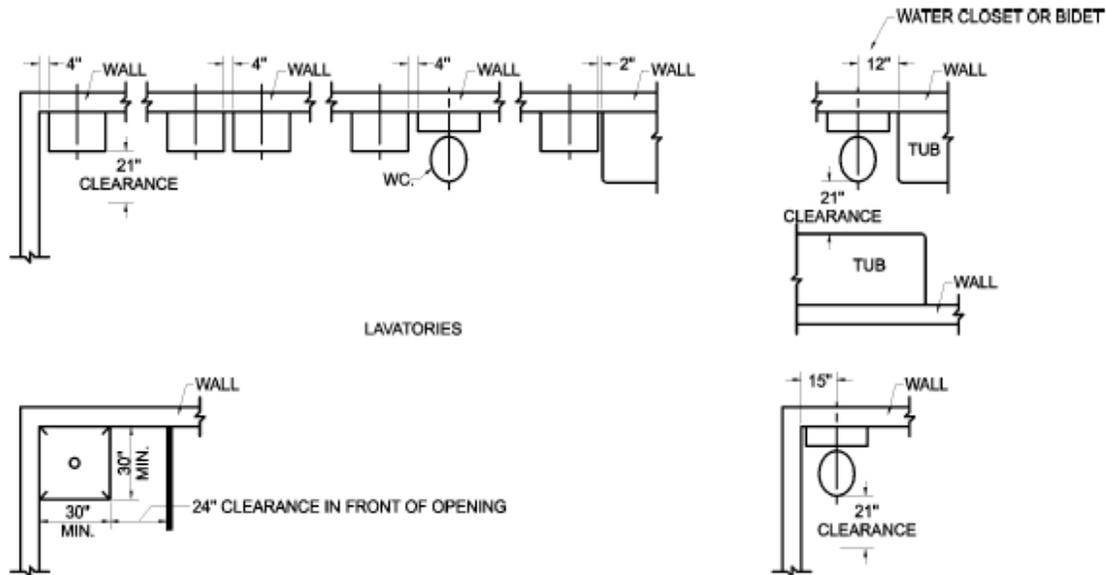


FIGURE 307.2  
MINIMUM FIXTURE CLEARANCES

Section: R311.8.1 Maximum slope. – The words “existing design or” were added to the Exception. The Exception now reads:

## 8 NOTICES

Where it is technically infeasible to comply because of existing design or site constraints, ramps may have a maximum slope of one unit vertical in eight horizontal (12.5 percent slope).

Section: R315.2 Where required in existing dwellings. – Deleted without substitution.

Table: R402.2 Minimum Specified Compressive Strength of Concrete. – The words “with exception of garage slabs” were added to the end of Footnote c. The modified table now reads:

c. Concrete in these locations that may be subject to freezing and thawing during construction shall be air -entrained concrete in accordance with Footnote d, with exception of garage slabs.

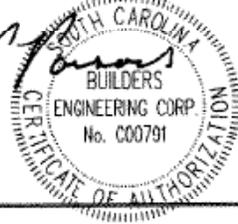
Table: R502.5(1) Girder Spans and Header Spans for Exterior Bearing Walls. – An additional table identified as Table R502.5(1)(A) was included with the existing table.

Alternate Table R502.5(1)

**Alternative to IRC Table R502.5(1)**  
**Number of Jack Studs and Maximum Spans for No. 2 SYP Girders and Headers in Exterior Bearing Walls with 10 psf Ground Snow Load**

Headers Supporting	Size	Building Width (feet)							
		12		20		28		36	
		Span	NJ	Span	NJ	Span	NJ	Span	NJ
	2-2x4	5-2	1	4-2	1	3-7	1	3-2	1
	2-2x6	7-6	1	6-0	1	5-1	1	4-7	1
	2-2x8	9-6	1	7-8	1	6-7	1	5-10	1
	2-2x10	11-7	1	9-2	1	7-10	1	7-0	1
	2-2x12	13-7	1	10-9	1	9-3	1	8-2	1
	3-2x8	12-8	1	10-2	1	8-8	1	7-8	1
	3-2x10	15-2	1	12-1	1	10-4	1	9-2	2
	3-2x12	17-9	1	14-2	1	12-2	2	10-9	2
	4-2x8	14-8	1	11-8	1	10-0	1	8-10	2
	4-2x10	17-7	1	14-0	1	12-0	2	10-8	2
4-2x12	20-6	1	16-4	2	14-0	2	12-6	2	
	2-2x4	---	---	3-9	1	2-9	1	2-6	1
	2-2x6	---	---	4-9	1	4-1	1	3-7	1
	2-2x8	---	---	6-2	1	5-3	1	4-8	1
	2-2x10	---	---	7-4	1	6-3	1	5-7	1
	2-2x12	---	---	8-7	1	7-4	2	6-6	2
	3-2x8	---	---	8-1	1	6-10	1	6-1	2
	3-2x10	---	---	9-8	1	8-4	2	7-3	2
	3-2x12	---	---	11-3	2	9-8	2	8-7	2
	4-2x8	---	---	9-4	1	8-0	2	7-1	2
	4-2x10	---	---	11-2	2	9-6	2	8-4	2
4-2x12	---	---	13-1	2	11-2	2	9-10	2	
	2-2x4	3-7	1	2-10	1	2-4	1	2-1	1
	2-2x6	5-2	1	4-1	1	3-6	1	3-1	1
	2-2x8	6-8	1	5-3	1	4-6	1	4-0	1
	2-2x10	8-0	1	6-3	1	5-4	2	4-8	2
	2-2x12	9-4	1	7-4	2	6-3	2	5-7	2
	3-2x8	8-9	1	6-10	1	5-10	2	5-2	2
	3-2x10	10-7	1	8-3	2	7-1	2	6-2	2
	3-2x12	12-4	2	9-8	2	8-3	2	7-3	2
	4-2x8	10-2	1	8-0	2	6-9	2	6-0	2
	4-2x10	12-2	2	9-7	2	8-1	2	7-2	2
4-2x12	14-3	2	11-2	2	9-6	2	8-4	3	
	2-2x4	---	---	2-10	1	2-4	1	2-1	1
	2-2x6	---	---	4-1	1	3-6	1	3-1	1
	2-2x8	---	---	5-4	1	4-6	1	4-0	1
	2-2x10	---	---	6-3	1	5-4	2	4-8	2
	2-2x12	---	---	7-4	2	6-3	2	5-7	2
	3-2x8	---	---	6-10	1	5-10	2	5-2	2
	3-2x10	---	---	8-3	2	7-1	2	6-2	2
	3-2x12	---	---	9-8	2	8-3	2	7-3	2
	4-2x8	---	---	8-0	2	6-9	2	6-0	2
	4-2x10	---	---	9-7	2	8-1	2	7-2	2
4-2x12	---	---	11-2	2	9-6	2	8-4	3	
	2-2x4	2-10	1	2-3	1	2-0	1	1-8	1
	2-2x6	4-2	1	3-3	1	2-9	1	2-6	1
	2-2x8	5-6	1	4-3	1	3-7	2	3-2	2
	2-2x10	6-6	1	5-1	2	4-3	2	3-9	2
	2-2x12	7-7	1	6-0	2	5-1	2	4-6	2
	3-2x8	7-2	1	5-7	2	4-9	2	4-2	2
	3-2x10	8-7	2	6-8	2	5-8	2	5-0	2
	3-2x12	10-0	2	7-9	2	6-8	2	5-10	3
	4-2x8	6-3	2	6-6	2	5-6	2	4-10	2
	4-2x10	9-10	2	7-8	2	6-7	2	5-9	3
4-2x12	11-7	2	9-1	2	7-8	3	6-9	3	

Building width is measured outside to outside and perpendicular to the ridge. For width between those shown, spans are permitted to be interpolated. Table assumes 1/2" roof overhang, 10 psf DL roof, ceiling and floors, 20 psf LL roof (construction load) and 40 psf LL floors.



<b>BUILDERS ENGINEERING CORP.</b> Two Hillstone Court Columbia, SC 29212  www.BuildersEngineering.com (803) 466-2466	Generated By: G. Parsons PE
	Verified By: D. Jones PE
October 23, 2006 Note: Check website for later revision	

## 10 NOTICES

Section: R612.2 Window sill height. – Deleted without substitution.

Sections: R903.5, R903.5.1, R903.5.2 and Figure R903.5 Hail Exposure Map. – Deleted without substitution.

Section: R907.3. – Condition 4 was deleted. The modified section now reads:

Recovering versus replacement. New roof coverings shall not be installed without first removing all existing layers of roof covering where any of the following conditions exist:

1. (No modification)
2. (No modification)
3. (No modification)

Exceptions: (No modification)

Section: M1411.5 Insulation of refrigerant piping. – The thermal resistivity of the insulation around refrigerant vapor lines was reduced from R 4.0 to R 2.5. The modified section now reads:

Piping and fittings for refrigerant vapor (suction) lines shall be insulated with insulation have a thermal resistivity of at least R 2.5 hr. ft 2 F/Btu and having external surface permeance not exceeding 0.05 perms [2.87 ng/(s m<sup>2</sup> Pa)] when tested in accordance with ASTM E 96.

Section: M1411.6 Locking access port caps. - Deleted without substitution.

Section: M1502.4.4.1 Specified length. – The section was modified to increase the maximum duct length from 25 to 35 feet from the connection of the terminus of the transition duct to the outlet terminal. The modified section now reads:

Specified length. The maximum length of the exhaust duct shall be 35 feet (10.668m) from the connection to the terminus of the transition duct from the dryer to the outlet terminal. Where fittings are utilized, the maximum length of the exhaust duct shall be reduced in accordance with Table M1502.4.4.1.

Section: E3901.11 HVAC outlet. – Language was added in the first sentence to establish that the required convenience receptacle is to be installed when HVAC and refrigeration equipment is located in an attic or crawl space. The modified section now reads:

A 125-volt, single-phase, 15 or 20 ampere-rated receptacle outlet shall be installed at an accessible location for the servicing of heating, air-conditioning and refrigeration equipment located in attics and crawl spaces. The receptacle shall be located on the same level and within 25 feet (7620 mm) of the heating, air-conditioning and refrigeration equipment. The receptacle outlet shall not be connected to the load side of the HVAC equipment disconnecting means.

Section: E3902.11 Arc-fault circuit-interrupter protection. – An exception was added to the section. The exception reads:

Exception: Arc-fault circuit interrupter protection is not required for outlets used solely for smoke and/or fire detection devices.

Section: E4002.14 Tamper-resistant receptacles. – The section was deleted and replaced with new language. The new section now reads:

Tamper-Resistant Receptacles in Dwelling Units. In all areas specified in 210.52 (National Electrical Code) all nonlocking type 125-volt, 15-and 20-ampere receptacles shall be listed tamper-resistant receptacles.

Exception No. 1: Receptacles located more than 1.7 m (5½ ft) above floor.

Exception No. 2: Receptacles that are part of a luminaire or appliance.

Exception No. 3: A single receptacle or a duplex receptacle for two appliances located within dedicated space for each appliance that in normal use is not easily moved from one place to another and that is cord-and-plug connected in accordance with 400.7(A)(6), (A)(7), or (A)(8) (National Electrical Code).

3. 2009 International Fire Code, no appendices, with modifications as follows:

Section: 503.2.1 Dimensions. – Language was modified to clarify the width requirement for fire apparatus access roads. The section now reads:

Dimensions. Fire apparatus access roads, where required by the International Building Code shall have an unobstructed width of not less than 20 feet (6096 mm), except for approved security gates in accordance with Section 503.6, and an unobstructed vertical clearance of not less than 13 feet 6 inches (4115 mm).

Section: 507.5.1 Where required. – Deleted and replaced with substitute language. The section now reads:

Water supply. Approved fire hydrants shall be provided for buildings to meet the necessary fire flow requirements as determined by the fire official. Where public water supply is inadequate or not available, an approved alternative water source meeting the fire flow requirements shall be provided. Fire flow performance tests shall be witnessed by the fire official, or representative, prior to final approval.

Location. The location and number of hydrants shall be designated by the fire official, but in no case, shall distance between installed fire hydrants exceed 1000 ft (305 m). Fire hydrants shall be located within 500 ft (152 m) of all firefighter access points when measured along the normal routes of fire department vehicle access which conforms to the requirements of Section 503. No point on the exterior of a building shall be located more than 500 ft (152 m) from a fire hydrant accessible to fire department vehicles as provided in Section 503.

Exception. One and two family dwellings, including attached or detached accessory structures.

Section: 903.2.7 Group M. – Language was added to condition number 4 to specify a maximum square footage for nonsprinkled space in a group M occupancy used for the display and sale of upholstered furniture. The section now reads:

4. A group M occupancy where a fire area exceeds 2,500 square feet and is used for the display and sale of upholstered furniture.

Section: 906.1(1) Where required. – The “Exception” was deleted without substitution.

4. 2009 International Fuel Gas Code, no appendices, with modifications as follows:

Section: G505.1.1 Commercial cooking appliances vented by exhaust hoods. – An exception was added to the section to allow an interlock between cooking appliances and exhaust hood systems as an option when the appliances are of the manually operated type and are factory equipped with standing pilot burner ignition systems. The modified section now reads:

## 12 NOTICES

Where commercial cooking appliances are vented by means of the Type I or Type II kitchen exhaust hood system that serves such appliances, the exhaust system shall be fan powered and the appliances shall be interlocked with the exhaust hood system to prevent appliance operation when the exhaust hood system is not operating. Where a solenoid valve is installed in the gas piping as part of an interlock system, gas piping shall not be installed to bypass such valve. Dampers shall not be installed in the exhaust system.

Exception: An interlock between the cooking appliance and the exhaust hood system shall not be required for appliances that are of the manually operated type and are factory equipped with standing pilot burner ignition systems.

The Building Codes Council specifically requested comments concerning sections of this edition, which may be unsuitable for enforcement in South Carolina and considered all submissions. Based upon the evidence presented to it, the Building Codes Council finds the following modifications will provide a reasonable degree of public health, safety and welfare, and will be suitable for enforcement in South Carolina.

### DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

#### NOTICE OF GENERAL PUBLIC INTEREST

##### NOTICE OF FINAL AMENDMENT TO AIR QUALITY STATE IMPLEMENTATION PLAN

Statutory Authority: S.C. Code Section 48-1-10 et seq.

#### Synopsis:

The Department has amended the South Carolina Air Quality Implementation Plan (SIP) in association with the Rock Hill Fort Mill Area Transportation Study (RFATS) Metropolitan Planning Organization (MPO) 8-hour ozone nonattainment area.

In a Federal Register (FR) notice published on July 18, 1997 (62 FR 38856), the United States Environmental Protection Agency (EPA) promulgated amendments to the National Ambient Air Quality Standards (NAAQS) for ozone.

On April 30, 2004 (69 FR 23858), the EPA designated and classified the portion of York County, South Carolina within the RFATS MPO as a moderate nonattainment area for the 8-hour ozone NAAQS as part of the Charlotte-Gastonia-Rock Hill nonattainment area (Metrolina region). As a result of this designation, the Department submitted its required attainment plan for the RFATS MPO 8-hour ozone NAAQS nonattainment area on August 31, 2007.

On November 17, 2008, the EPA sent letters to North Carolina and South Carolina, explaining its intention to propose disapproval of the attainment demonstrations for the Metrolina region for the 1997 8-hour ozone standard by January 9, 2009. Within these letters, the EPA indicated this decision was based on its belief that the area was unlikely to attain the 1997 ozone standard by June 15, 2010, or meet the requirements for a one-year extension of the attainment date. As a result, the Department withdrew its attainment demonstration on December 22, 2008. EPA then made a finding of failure to submit State Implementation Plan revisions required for the 1997 8-hour ozone NAAQS to South Carolina and North Carolina for the Charlotte-Gastonia-Rock Hill nonattainment area [*Federal Register* notice published on May 8, 2009 (74 FR 21550)]. It should be noted that no monitors in the Metrolina region exceeded the 1997 8-hour ozone standard during the 2009 ozone season, which met the requirement for a one-year extension of the attainment date. In consideration of this data and in consultation with the North Carolina Department of Environment and Natural Resources and the EPA, the Department will resubmit an updated Attainment Demonstration.

Specifically, based on EPA guidance, the Department is resubmitting the original attainment demonstration submitted in 2007 with additional information including the 2011 modeling and actual air quality data from 2009.

The Department published a Notice of General Public Interest which included an announcement of a 30-day comment period and opportunity to request a public hearing in the State Register on February 26, 2010. A prehearing package was submitted to the EPA on February 26, 2010. No request for a public hearing was received, and the public comment period closed on March 29, 2010. Written comments were received from the Southern Environmental Law Center. Responses to these comments are included in the Department's submittal to the EPA which was sent on April 27, 2010.

These submittals and further information is available via the Department's website at [http://www.scdhec.gov/environment/baq/Metrolina-SC\\_Nonattainment/](http://www.scdhec.gov/environment/baq/Metrolina-SC_Nonattainment/).

## DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

### NOTICE

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 May 28, 2010, 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 Mrs. Sarah "Sallie" C. Harrell, Division of Planning and Certification of Need, 2600 Bull St., Columbia, SC 29201 at (803) 545-4200.

#### Affecting Aiken County

Construction for the addition of twelve (12) psychiatric beds for a total of forty-one (41) licensed psychiatric beds

Aiken Regional Medical Center

Aiken, South Carolina

Project Cost: \$2,670,236

#### Affecting Anderson County

Construction of a sixty (60) bed nursing home that does not participate in the Medicaid (Title XIX) Program

The Gardens at Town Creek

Pendleton, South Carolina

Project Cost: \$12,122,501

#### Affecting Calhoun and Orangeburg Counties

Expansion and renovation of the medical oncology area of the Mabry Cancer Center to include the addition of a second (2<sup>nd</sup>) linear accelerator

The Regional Medical Center of Orangeburg and Calhoun Counties

Orangeburg, South Carolina

Project Cost: \$9,136,840

#### Affecting Horry County

Construction of a sixty (60) bed nursing home that will not participate in the Medicaid (Title XIX) Program

Seaside Living Center

Myrtle Beach, South Carolina

Project Cost: \$13,199,222

## 14 NOTICES

### Affecting Orangeburg County

Change in classification from a specialized hospital licensed for Alcohol and Drug Abuse Treatment for Adolescents with fifteen (15) Substance Abuse Beds to a specialized hospital licensed with fifteen (15) inpatient psychiatric beds restricted only for the provision of alcohol and drug abuse treatment for adolescents; these beds will not be counted in the psychiatric bed need calculations

William J. McCord Adolescent Treatment Facility

Orangeburg, South Carolina

Project Cost: \$30,000

### Affecting York County

Construction of a new wing to the existing facility for the relocation of twenty one (21) nursing home beds; elimination of eleven 4-bed wards by converting them to twenty two (22) semi private patient rooms and the renovation of one (1) private patient room; the addition of a rehabilitation department, chapel, laundry room and employee offices with the total licensed bed capacity remaining at one hundred forty one (141) nursing home beds

White Oak Manor of Rock Hill, Inc.

Rock Hill, South Carolina

Project Cost: \$5,960,862

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 May 28, 2010. "Affected persons" have 30 days from the above date to submit comments or requests for a public hearing to Mr. Les W. Shelton, Division of Planning and Certification of Need, 2600 Bull Street, Columbia, S.C. 29201. For further information call (803) 545-4200.

### Affecting Aiken County

Renovation for the replacement of the existing extremity Magnetic Resonance Imaging (MRI) unit with a 1.5 Tesla MRI unit

Carolina Musculoskeletal Institute, P.A.

Aiken, South Carolina

Project Cost: \$1,195,200

### Affecting Horry County

Conversion of twenty four (24) inpatient hospice beds to nursing home beds for a total of ninety six (96) nursing home beds that do not participate in the Medicaid (Title XIX) program

Agape Rehabilitation of Conway

Conway, South Carolina

Project Cost: \$0

Conversion of one (1) procedure room to one (1) operating room for a total of three (3) operating rooms

Carolina Bone and Joint Surgery Center, LLC

Myrtle Beach, South Carolina

Project Cost: \$379,131

Affecting Orangeburg County

Change in classification from a specialized hospital licensed for Alcohol and Drug Abuse Treatment for Adolescents with fifteen (15) Substance Abuse Beds to a specialized hospital licensed with fifteen (15) inpatient psychiatric beds restricted only for the provision of alcohol and drug abuse treatment for adolescents; these beds will not be counted in the psychiatric bed need calculations

William J. McCord Adolescent Treatment Facility

Orangeburg, South Carolina

Project Cost: \$30,000

The South Carolina State Health Planning Committee will hold public hearings on the Draft 2010-2011 South Carolina Health Plan at the following times and locations:

Monday, July 12, 2010, 11:00 a.m. until 12:00 noon, Florence Health Department Auditorium, 145 East Cheves Street, Florence, South Carolina;

Tuesday, July 13, 2010, 11:00 a.m. until 12:00 noon, City of North Charleston Council Chambers, 4900 LaCross Road, North Charleston, South Carolina;

Wednesday, July 14, 2010, 11:00 a.m. until 12:00 noon, Spartanburg County Council Chambers, 366 North Church Street, Spartanburg, South Carolina;

Friday, July 16, 2010, 11:00 a.m. until 12:00 noon, first floor conference room of the Heritage Building, 1777 St. Julian Place, Columbia, South Carolina.

The State Health Planning Committee is soliciting comments on the Draft 2010-2011 South Carolina Health Plan and prefers to receive these comments in writing so all members of the State Health Planning Committee can review them.

Written comments will be received through Friday, July 16, 2010. The Plan will be available for public review at the South Carolina Department of Health and Environmental Control, 1777 St. Julian Place, Suite 201, Columbia, SC, the State Library, 1500 Senate Street, Columbia, SC and all State Depository Libraries. The Plan will also be accessible on the website of the S.C. Department of Health and Environmental Control: <http://www.scdhec.net/>

Comments on the Draft Plan may be presented at the public hearings or submitted to the S.C. State Health Planning Committee, S.C. Department of Health and Environmental Control, Division of Planning and Certification of Need, 2600 Bull St., Columbia, SC 29201 through July 16, 2010. The FAX number is 803-545-4579. For additional information, call (803) 545-4200.

## 16 NOTICES

### DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

#### NOTICE OF GENERAL PUBLIC INTEREST

##### Notice:

The Department of Health and Environmental Control is proposing to replace NO<sub>x</sub> SIP Call permit conditions with Clean Air Interstate Rule (CAIR) permit conditions in affected Title V Operating Permits. The condition is open to comments from the public, affected states, and the United States Environmental Protection Agency (EPA). Interested persons are invited to present their views concerning these amendments in writing to Ms. Veronica Barringer, Coastal Plain and Power Permitting Section, Bureau of Air Quality, 2600 Bull Street, Columbia, SC 29201, or via electronic mail at [barrinv@dhec.sc.gov](mailto:barrinv@dhec.sc.gov). To be considered, the Department must receive comments by 5:00 pm on June 29, 2010.

##### Synopsis:

On October 27, 1998, the EPA published a final rule titled, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone" [63 FR 57355]. This rule, also known as the NO<sub>x</sub> SIP Call, requires South Carolina and certain other states to limit the summertime emissions of oxides of nitrogen (NO<sub>x</sub>), which are one of the precursors of ozone pollution.

On May 24, 2002, the Department issued Regulation 61-62.96, Nitrogen Oxides (NO<sub>x</sub>) and Sulfur Dioxide (SO<sub>2</sub>) Budget Trading Program, to implement the NO<sub>x</sub> SIP Call in South Carolina. R. 61-62.96 required certain facilities to obtain NO<sub>x</sub> SIP Call Permits. The Department incorporated these NO<sub>x</sub> SIP Call Permit requirements into a condition of the affected facilities' Title V Operating Permits.

On March 10, 2005, the EPA finalized the "Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule)," (also referred to as the CAIR). The CAIR was published in the *Federal Register* on May 12, 2005 [70 FR 25162]. This rule affects 28 states and the District of Columbia. In the CAIR, the EPA found that South Carolina is one of the 28 states that contribute significantly to nonattainment of the National Ambient Air Quality Standards (NAAQS) for fine particles (PM<sub>2.5</sub>) and/or 8-hour ozone in downwind states. The EPA required these states to revise their State Implementation Plans (SIPs) to reduce emissions of SO<sub>2</sub> and/or NO<sub>x</sub>. SO<sub>2</sub> is a precursor to PM<sub>2.5</sub> formation, and NO<sub>x</sub> is a precursor to both PM<sub>2.5</sub> and ozone formation. The EPA determined that electric generating units (EGUs) in South Carolina contributed to nonattainment of PM<sub>2.5</sub> and 8-hour ozone NAAQS in downwind states. The CAIR was designed to replace the NO<sub>x</sub> SIP Call program.

On June 22, 2007, the Department promulgated revisions to R. 61-62.96, Nitrogen Oxides (NO<sub>x</sub>) and Sulfur Dioxide (SO<sub>2</sub>) Budget Trading Program to incorporate CAIR.

On May 1, 2009, the CAIR program replaced the NO<sub>x</sub> SIP Call program. R. 61-62.96 required facilities that had NO<sub>x</sub> SIP Call permits to obtain CAIR permits that the Department would then incorporate into a condition of the affected facilities' Title V Operating Permits.

Though the NO<sub>x</sub> SIP Call program is no longer effective, the NO<sub>x</sub> SIP Call program requirements remain in some of the Title V Operating Permits for the following facilities subject to CAIR in South Carolina:

Source	Physical Address	County	Permit Number
Electricity-generating units			
Calpine: Broad River Energy Center LLC	1124 Victory Trail Rd. Gaffney, SC 29340	Cherokee	0600-0076
Calpine: Columbia Energy Center	100 Calpine Way Gaston, SC 29053	Calhoun	0460-0024
Cherokee County Cogeneration Partners LP	132 Peoples Creek Rd. Gaffney, SC 29340	Cherokee	0600-0060
Duke Energy Carolinas LLC: W.S. Lee Steam Station	Big Creek Rd. Pelzer, SC 29669	Anderson	0200-0004
Duke Energy Carolinas LLC: Mill Creek Combustion Turbine	317 Elm Rd. Blacksburg, SC 29702	Cherokee	0600-0081
Progress Energy Carolinas Inc: H.G. Robinson/ Darlington Electric Power Plant	3512 Lakeside Dr. Hartsville, SC 29550	Darlington	0820-0002
Santee Cooper: Cross Generating Station	553 Cross Station Rd. Pineville, SC 29468	Berkeley	0420-0030
Santee Cooper: Grainger Generating Station	1605 Marina Dr. Conway, SC 29169	Horry	1340-0003
Santee Cooper: Hilton Head Gas Turbine	41 Power Alley Rd. Hilton Head, SC 29925	Beaufort	0360-0006
Santee Cooper: Jeffries Generating Station	463 Power House Rd, Moncks Corner, SC 29461	Berkeley	0420-0003
Santee Cooper: Myrtle Beach Gas Turbine	US Hwy. 501 & US Hwy. 17 Bypass Myrtle Beach, SC 29572	Horry	1340-0021
Santee Cooper: Rainey Generating Station	2900 Opry House Rd. Starr, SC 29684	Anderson	0200-0144
Santee Cooper: Winyah Generating Station	3097 Pennyroyal Rd. Georgetown, SC 29440	Georgetown	1140-0005
SCE&G: Canadys Station	13139 Augusta Hwy. Canadys, SC 29433	Colleton	0740-0002
SCE&G: Cope Station	405 Teamwork Rd. Cope, SC 29038	Orangeburg	1860-0044
SCE&G: Hagood Station	2600 Hagood Rd. Charleston, SC 29405	Charleston	0560-0029
SCE&G: Jasper Generating Station	10719 Purrysburg Rd. Hardeeville, SC 29927	Jasper	1360-0026
SCE&G: McMeekin Station	2000 N. Lake Dr. Columbia, SC 29212	Lexington	1560-0003
SCE&G: Urquhart Station	100 Urquhart Rd. Beech Island, SC 29842	Aiken	0080-0011
SCE&G: Wateree Station	142 Wateree Station Rd. Eastover, SC 29044	Richland	1900-0013
SCE&G: A.M. Williams Station	2242 Bushy Park Rd. Goose Creek, SC 29445	Berkeley	0420-0006
Non-electricity-generating units			
Abitibi Bowater Inc	5300 Cureton Ferry Rd. Catawba, SC 29704	York	2440-0005

## 18 NOTICES

Source	Physical Address	County	Permit Number
BP Amoco Chemical Company: Cooper River Plant	1306 Amoco Dr. Wando, SC 29492	Berkeley	0420-0029
Cogen South LLC	5600 Virginia Ave. North Charleston, SC 29423	Charleston	0560-0244
Domtar Paper Co, LLC: Marlboro Mill	585 Willamette Rd. Bennettsville, SC 29512	Marlboro	1680-0043
International Paper Company: Eastover Mill	4001 McCords Ferry Rd. Eastover, SC 29044	Richland	1900-0046
Invista S.à.r.l: Camden Facility	643 US Hwy. 1 S. Lugoff, SC 29078	Kershaw	1380-0003
Smurfit Stone Container Enterprises Inc.	7320 Mill Rd. Florence, SC 29501	Florence	1040-0003
Sonoco Products Company	1 N 2 <sup>nd</sup> St. Hartsville, SC 29550	Darlington	0820-0012

In an effort to ensure compliance, maintain conformity with state requirements and standards, and reduce confusion for the affected facilities, the Department is proposing to remove the NO<sub>x</sub> SIP Call requirements from the affected Title V Operating Permits and add CAIR requirements to the appropriate Title V Operating Permits as a significant modification.

Regulation 61-62.70.7(e) provides authority to the Department to make modifications to Title V Operating Permits.

The permit modifications will not result in any emissions changes. The affected facilities are already subject to the CAIR, pursuant to the requirements of Regulation 61-62.96 and 40 CFR 96, and are currently participating in its emissions trading program.

The specific permit condition language and more information on the facilities subject to CAIR in South Carolina is available for public review on DHEC's website at:  
<http://www.scdhec.gov/environment/baq/CAIR>

### DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

#### NOTICE OF GENERAL PUBLIC INTEREST

Section IV of R.61-98, the State Underground Petroleum Environmental Response Bank (SUPERB) Site Rehabilitation and Fund Access Regulation, requires that the Department of Health and Environmental Control evaluate and certify site rehabilitation contractors to perform site rehabilitation of releases from underground storage tanks under the State Underground Petroleum Environmental Response Bank (SUPERB) Act.

Class I Contractors perform work involving the collection and interpretation of investigative data; the evaluation of risk; and/or the design and implementation of corrective action plans. Class I applicants must satisfy registration requirements for a Professional Engineer or Geologist in South Carolina. Class II Contractors perform work involving routine investigative activities (e.g., soil or ground water sampling, well installation, aquifer testing) where said activities do not require interpretation of the data and are performed in accordance with established regulatory or industry standards.

Pursuant to Section IV.B.1., the Department is required to place a list of those contractors requesting certification on public notice and accept comments from the public for a period of thirty (30) days. If you wish to provide comments regarding the companies and/or individuals listed below, please submit your comments in writing, no later than June 21, 2010 to:

Contractor Certification Program  
South Carolina Department of Health and Environmental Control  
Bureau of Land and Waste Management - Underground Storage Tank Program  
Attn: Michelle Dennison  
2600 Bull Street  
Columbia, SC 29201

The following companies and/or individuals have applied for certification as Underground Storage Tank Site Rehabilitation Contractors:

Class I

Henry Nemargut Engineering Services  
Attn: Henry Nemargut  
2211 Chestnut Street  
Wilmington, NC 28405

Tetra Tech  
Attn: Scott A. Nesbit  
661 Anderson Drive  
Pittsburg, PA 15220

**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

**ERRATUM**

This notice is to correct the number in Section B.7.e(4) of R.61-47, Shellfish, that is in error as a result of the development of the electronic Code of Regulations, whereas the software used did not convert some of the symbols and scientific data in regulations accurately. The number in error in this section is  $2 \times 10^9$ , but should read  $2 \times 10^9$ .

This erratum corrects Section 61-47.B.7.e(4) to read:

(4) A rate of discharge of  $2 \times 10^9$  fecal coliform per person per day;

**DEPARTMENT OF LABOR, LICENSING AND REGULATION**

**NOTICE**

**NOTICE OF PUBLIC HEARING  
OCCUPATIONAL SAFETY AND HEALTH STANDARDS**

The South Carolina Department of Labor, Licensing, and Regulation (LLR) does hereby give notice under Section 41-15-220, S.C. Code of Laws, 1976, as amended, that a public hearing will be held on June 28, 2010 at 1:00 p.m. at the S.C. Department of LLR, 1st floor, Room 105, 110 Centerview Drive, Columbia, S.C., at which time interested persons will be given the opportunity to appear and present views on the occupational safety and health standards being considered for adoption, which are as follows:

In Subarticle 6 (General Industry and Shipyard Employment):

Revisions to 1910.7, 1910.8, 1910.9, 1910.1000, 1910.1026, and 1915.1026

In Subarticle 7 (Construction)

Revisions to 1926.1126

Any omissions or corrections to the occupational safety and health standards being considered for adoption published in the FEDERAL REGISTER prior to this hearing may be presented at this hearing. These revisions are necessary to comply with federal law and copies of the regulations may be obtained or reviewed at the S.C. Department of LLR during normal business hours by contacting the Occupational Safety and Health Administration office at (803) 896-7661 or (803) 896-7682.

Persons desiring to speak at the hearing shall file with the Director of LLR a notice of intention to appear and the approximate amount of time required for his/her presentation on the particular matter no later than June 25, 2010. Any person who wishes to express his/her views, but is unable or does not desire to appear and testify at the hearing, should submit those views to the undersigned in writing on or before June 25, 2010.

Adrienne Riggins Youmans  
Director  
SC Department of LLR  
Post Office Box 11329  
Columbia, SC 29211-1329

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

Statutory Authority: 1976 Code Sections 44-55-10 et seq.

**Notice of Drafting:**

The South Carolina Department of Health and Environmental Control (Department) proposes to amend South Carolina Regulation 61-30, Environmental Protection Fees. Interested persons may submit their views in writing to Mr. Douglas B. Kinard, Drinking Water Protection Division, Bureau of Water, S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201. To be considered, written comments must be received no later than 5:00 p.m. on June 28, 2010, the close of the drafting period.

**Synopsis:**

The Department proposes to revise R.61-30 to increase the Safe Drinking Act Fee schedule so that the Drinking Water Trust Fund will remain solvent in the face of new program requirements and monitoring mandated by the U.S. Environmental Protection Agency. The Department collects a fee from public water systems in the state to fund the implementation of the State Safe Drinking Water Act, which includes most compliance monitoring required under the State Primary Drinking Water Regulations.

Recent revisions to the State Primary Drinking Water Regulations, which were necessary to maintain consistency with federal regulations, mandate a significant increase in the number of compliance samples that must be collected and analyzed by public water systems in the state. The current fee schedule in R.61-30 does not provide adequate funding for the Department to continue to collect and analyze these required compliance samples for the public water systems. Legislative Review is required.

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

Statutory Authority: 1976 Code Sections 44-56-30 et seq.

**Notice of Drafting:**

The South Carolina Department of Health and Environmental Control (Department) proposes to amend R.61-79, Hazardous Waste Management Regulations. Interested persons are invited to present their views in writing to Richard Haynes, Director of the 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 no later than 5:00 p.m. on Tuesday, June 29, 2010, the close of the drafting comment period.

**Synopsis:**

1. The United States Environmental Protection Agency (USEPA) promulgates amendments to 40 CFR 260, 261, 262, 263, 264, 265, 266, 268, 270, and 273 during the calendar year. Recent federal amendments affect one Final Rule South Carolina intends to adopt that was published in the period between July 1, 2008 and June 30, 2009. The Rule for Academic Laboratories Generator Standards establishes a new Subpart K within 40 CFR part 262, which establishes an alternative set of generator requirements applicable to laboratories owned by eligible academic entities that are flexible and protective, and address the specific nature of hazardous waste generation and accumulation in these laboratories. This rule was published by the USEPA in the Federal Register December 1, 2008 at 73 FR 72912. The adoption of this Rule is optional to States. The Department intends to amend R.61-79 to maintain conformity with federal regulations by adopting the Academic Laboratories Rule.

## 22 DRAFTING NOTICES

2. The State intends to establish requirements for transfer facilities where manifested shipments of hazardous waste in containers are stored for more than 10 days. The Rule being developed would establish permitting and storage requirements for hazardous waste storage at a transfer facility as well as establish financial assurance to protect the environment and the State in the event of a spill or accident that would have an environmental impact. This rule would be modeled after a Rule developed by and adopted into regulation by the State of Florida.

3. The USEPA discontinued the National Environmental Performance Track (PT) Program in a Federal Register on May 14, 2009 at 74 FR 22741. The Department is proposing to amend R.61-79 to remove all references throughout the regulations to the USEPA's PT Program, as well as the analogous state program, the South Carolina Environmental Excellence Program (SCEEP). These Programs provide regulatory incentives to facilities with good compliance records that are less stringent than Federal standards, such as fewer inspections, reduced paper work, and longer storage times. The references to the SCEEP will be removed because the State cannot be less stringent than Federal regulations.

Legislative review of these amendments will be required.

**COMMISSION ON HIGHER EDUCATION**  
**CHAPTER 62**  
Statutory Authority: 1976 Code Section 59-149-10

### **Notice of Drafting:**

The South Carolina Commission on Higher Education is considering clarifying and updating existing regulations which govern, to the extent authorized by S.C. Code, Title 59, Chapter 150, the State's South Carolina HOPE Scholarship Program. The new regulation should replace the existing South Carolina HOPE Scholarship regulation.

Interested persons may submit comments to Dr. Karen Woodfaulk, Director of Students Services Division, South Carolina Commission on Higher Education, 1333 Main Street, Suite 200, Columbia, S.C. 29201-3245. To be considered, comments must be received no later than 5:00 p.m. on September 26, 2010, the close of the drafting comment period.

### **Synopsis:**

The General Assembly passed Act 280, the SC Illegal Immigration Reform Act, during the 2008 legislative session. The Act requires institutions of higher learning in this state to develop a process through which a student's lawful presence in the United States is verified through the Federal Government. Students whose lawful presence cannot be verified cannot attend any of South Carolina's public higher education institutions, nor can they receive public benefits at any of the state's independent institutions. The proposed changes to the existing South Carolina HOPE Scholarship regulation are necessary to ensure the current regulation is consistent with the legislative mandates of the South Carolina Illegal Immigration Act.

In addition, the proposed changes to the regulation also add clarifying language to the procedures that institutions must follow when determining students' eligibility and when disbursing South Carolina HOPE Scholarship funds to eligible students.

Legislative review of this proposal will be required.

**COMMISSION ON HIGHER EDUCATION**  
**CHAPTER 62**  
Statutory Authority: 1976 Code Section 59-149-10

**Notice of Drafting:**

The South Carolina Commission on Higher Education is considering clarifying and updating existing regulations which govern, to the extent authorized by S.C. Code, Title 59, Chapter 149, the State's LIFE Scholarship and LIFE Scholarship Enhancement Program. The new regulation should replace the existing LIFE Scholarship regulation.

Interested persons may submit comments to Dr. Karen Woodfaulk, Director of Students Services Division, South Carolina Commission on Higher Education, 1333 Main Street, Suite 200, Columbia, S.C. 29201-3245. To be considered, comments must be received no later than 5:00 p.m. on September 26, 2010, the close of the drafting comment period.

**Synopsis:**

The General Assembly passed Act 280, the SC Illegal Immigration Reform Act, during the 2008 legislative session. The Act requires institutions of higher learning in this state to develop a process through which a student's lawful presence in the United States is verified through the Federal Government. Students whose lawful presence cannot be verified cannot attend any of South Carolina's public higher education institutions, nor can they receive public benefits at any of the state's independent institutions. The proposed changes to the existing LIFE Scholarship and Scholarship Enhancement regulation are necessary to ensure the current regulation is consistent with the legislative mandates of the South Carolina Illegal Immigration Act.

In addition, the proposed changes to the regulation also add clarifying language to the procedures that institutions must follow when determining students' eligibility and when disbursing LIFE Scholarship Enhancement funds to eligible students. Finally, the proposed regulation also provides for students in the Pre-Pharmacy Programs at South University and Presbyterian College to be eligible for the LIFE Scholarship Enhancements.

Legislative review of this proposal will be required.

**COMMISSION ON HIGHER EDUCATION**  
**CHAPTER 62**  
Statutory Authority: 1976 Code Section 59-150-360

**Notice of Drafting:**

The South Carolina Commission on Higher Education is considering clarifying and updating existing regulations which govern, to the extent authorized by S.C. Code, Title 59, Chapter 150, the State's Lottery Tuition Assistance Program for Two-Year Public and Independent Institutions. The new regulation should replace the existing Lottery Tuition Assistance Program regulation.

Interested persons may submit comments to Dr. Karen Woodfaulk, Director of Students Services Division, South Carolina Commission on Higher Education, 1333 Main Street, Suite 200, Columbia, S.C. 29201-3245. To be considered, comments must be received no later than 5:00 p.m. on September 26, 2010, the close of the drafting comment period.

## **24 DRAFTING NOTICES**

### **Synopsis:**

The General Assembly passed Act 280, the SC Illegal Immigration Reform Act, during the 2008 legislative session. The Act requires institutions of higher learning in this state to develop a process through which a student's lawful presence in the United States is verified through the Federal Government. Students whose lawful presence cannot be verified cannot attend any of South Carolina's public higher education institutions, nor can they receive public benefits at any of the state's independent institutions. The proposed changes to the existing LIFE Scholarship and Scholarship Enhancement regulation are necessary to ensure the current regulation is consistent with the legislative mandates of the South Carolina Illegal Immigration Act.

In addition, the proposed changes to the regulation also add clarifying language to the procedures that institutions must follow when determining students' continued eligibility when disbursing Lottery Tuition Assistance funds. Specifically, the proposed changes include that students must meet satisfactory academic progress (SAP) for the purposes of complying with Title IV regulations to meet continued eligibility to receive Lottery Tuition Assistance funds.

Legislative review of this proposal will be required.

**COMMISSION ON HIGHER EDUCATION**  
**CHAPTER 62**  
Statutory Authority: 1976 Code Section 59-142-20

### **Notice of Drafting:**

The South Carolina Commission on Higher Education is considering clarifying and updating existing regulations which govern, to the extent authorized by S.C. Code, Title 59, Chapter 142, the State's South Carolina Need-based Grants Program. The new regulation should replace the existing South Carolina Need-based Grants Program regulation.

Interested persons may submit comments to Dr. Karen Woodfaulk, Director of Students Services Division, South Carolina Commission on Higher Education, 1333 Main Street, Suite 200, Columbia, S.C. 29201-3245. To be considered, comments must be received no later than 5:00 p.m. on September 26, 2010, the close of the drafting comment period.

### **Synopsis:**

The General Assembly passed Act 280, the SC Illegal Immigration Reform Act, during the 2008 legislative session. The Act requires institutions of higher learning in this state to develop a process through which a student's lawful presence in the United States is verified through the Federal Government. Students whose lawful presence cannot be verified cannot attend any of South Carolina's public higher education institutions, nor can they receive public benefits at any of the state's independent institutions. The proposed changes to the existing South Carolina Need-based Grants Program regulation are necessary to ensure the current regulation is consistent with the legislative mandates of the South Carolina Illegal Immigration Act.

In addition, the proposed changes to the regulation add clarifying language to the procedures that institutions must follow when determining students' initial eligibility.

Legislative review of this proposal will be required.

**COMMISSION ON HIGHER EDUCATION**  
**CHAPTER 62**  
Statutory Authority: 1976 Code Section 59-149-10

**Notice of Drafting:**

The South Carolina Commission on Higher Education is considering clarifying and updating existing regulations which govern, to the extent authorized by S.C. Code, Title 59, Chapter 149, the State's Palmetto Fellows Scholarship and Palmetto Fellows Scholarship Enhancement Program. The new regulation should replace the existing Palmetto Fellows Scholarship and Palmetto Fellows Scholarship Enhancement regulation.

Interested persons may submit comments to Dr. Karen Woodfaulk, Director of Students Services Division, South Carolina Commission on Higher Education, 1333 Main Street, Suite 200, Columbia, S.C. 29201-3245. To be considered, comments must be received no later than 5:00 p.m. on September 26, 2010, the close of the drafting comment period.

**Synopsis:**

The General Assembly passed Act 280, the SC Illegal Immigration Reform Act, during the 2008 legislative session. The Act requires institutions of higher learning in this state to develop a process through which a student's lawful presence in the United States is verified through the Federal Government. Students whose lawful presence cannot be verified cannot attend any of South Carolina's public higher education institutions, nor can they receive public benefits at any of the state's independent institutions. The proposed changes to the existing Palmetto Fellows Scholarship and Palmetto Fellows Scholarship Enhancement regulation are necessary to ensure the current regulation is consistent with the legislative mandates of the South Carolina Illegal Immigration Act.

The proposed changes to the regulation also add clarifying language to the procedures that institutions must follow when determining students' eligibility and when disbursing the Palmetto Fellows Scholarship Enhancement funds to eligible students. In addition, the proposed changes to the regulations clarify the application procedures and clarify the use of class rank by students attending out-of-state preparatory schools to qualify for the Palmetto Fellows Scholarship. Finally, the proposed regulation also provides for students in the Pre-Pharmacy Programs Presbyterian College to be eligible for the Palmetto Fellows Scholarship Enhancements.

Legislative review of this proposal will be required.

## 26 DRAFTING NOTICES

### PUBLIC SERVICE COMMISSION CHAPTER 103

Statutory Authority: 1976 Code Section 58-3-140

#### **Notice of Drafting:**

The Public Service Commission of South Carolina proposes to amend Regulation 103-607 regarding prepaid local exchange services and bonds or other security mechanisms. Interested persons may submit comments to the Public Service Commission, Clerk's Office, 101 Executive Center Drive, Columbia, South Carolina 29210. Please reference Docket Number 2007-400-C. To be considered, comments must be received no later than 4:45 p.m. on July 1, 2010.

#### **Synopsis:**

The Commission seeks to amend Regulation 103-607 by applying the provisions of this Regulation to all telephone utilities who provide retail residential local exchange services. With this modification, Regulation 103-607 should be amended to delete any reference to prepaid local exchange services and advance payments. Additionally, Regulation 103-607 should be amended to provide that the Office of Regulatory Staff should receive a copy of any bond or other security mechanism that is filed with the Commission.

Legislative review of these proposals will be required.

### PUBLIC SERVICE COMMISSION CHAPTER 103

Statutory Authority: 1976 Code Section 58-3-140

#### **Notice of Drafting:**

The Public Service Commission of South Carolina proposes to amend Regulations 103-331 and 103-336. The revisions are necessary to update the regulations to reflect current practices in the electric utility industry and to comply with the provisions of Commission Order No. 2009-770. Interested persons may submit comments to the Public Service Commission, Clerk's Office, 101 Executive Center Drive, Columbia, South Carolina 29210. Please reference Docket Number 2010-173-E. To be considered, comments must be received no later than 4:45 p.m. on July 1, 2010.

#### **Synopsis:**

Regulation 103-331 governs customer deposits. Regulation 103-336 governs deposit retention. One section of Regulation 103-331 allows an electrical utility to require a deposit from a customer if "the customer's past payment record to an electrical utility shows delinquent payment practice, i.e., customer has had two consecutive thirty-day arrears, or more than two non-consecutive thirty-day arrears in the past twenty-four months." Another section of Regulation 103-331 allows an electrical utility to require a deposit from a customer who "has no deposit and presently is delinquent in payments, i.e., has had two consecutive thirty-day arrears, or more than two non-consecutive thirty-day arrears in the past twenty-four months." Regulation 103-336 states "deposits shall be refunded completely with interest after two years unless the customer has had two consecutive thirty-day arrears, or more than two non-consecutive thirty-day arrears, in the past twenty-four months." References to "thirty-day arrears" in both these Regulations should be deleted to reflect current billing practices of electric utilities.

During a hearing conducted before the Commission regarding the partial waiver of Regulations 103-331 and 103-336, a utility employee witness testified that although a non-residential customer may be paying its electric bill on a regular basis, its financial condition with other customers or suppliers may be rapidly deteriorating and bankruptcy may be imminent. For these type customers, no charges for electric service are made until after the electricity already has been used, and the customer continues to use electricity until or after that bill becomes past due. The utility companies therefore expressed, and the Commission approved, a need for the ability to request a deposit from such non-delinquent non-residential customers, or for similar relief, and to retain the deposit longer than the two-year period provided for in Regulation 103-336, if necessary. Also, utility internal credit risk rating criteria to determine a non-residential customer's credit worthiness and to assess whether a customer should pay a deposit helps the utility avoid losses and subsequent write-offs to uncollectible accounts. In Order No. 2009-770, the Commission found that "providing the State's utilities with the tools to secure customer accounts when a customer is in financial distress benefits the utilities' general body of ratepayers." Thus, Regulations 103-331 and 103-336 should be amended to reflect the current billing practices of electrical utilities and the findings in Commission Order No. 2009-770.

Legislative review of these proposals will be required.

**WORKERS' COMPENSATION COMMISSION**

**CHAPTER 67**

Statutory Authority: 1976 Code Section 42-3-30

**Notice of Drafting:**

The South Carolina Workers' Compensation Commission proposes to amend regulations to Chapter 67. The amendments also reflect grammatical changes. Interested persons should submit their comments in writing to Gary M. Cannon, Executive Director, South Carolina Workers' Compensation Commission, Post Office Box 1715, Columbia, South Carolina 29202-1715.

**Synopsis:**

The Commission is making revisions to address the following subject:

Regulation 67-405C(1) is amended to allow ten days notice of cancellation for nonpayment of premium. Such termination shall not be effective until ten days after receipt by the Commission's authorized agent. A workers' compensation insurance carrier shall file a notice of termination in accordance with R.67-416.

## 28 EMERGENCY REGULATIONS

Filed: April 19, 2010 2:42pm

Document No. 4127  
**CLEMSON UNIVERSITY**  
**STATE CROP PEST COMMISSION**  
CHAPTER 27

Statutory Authority: 1976 Code Sections 46-9-15, 46-9-40, and 46-9-60

27-78. *Phytophthora ramorum* Quarantine.

**Emergency situation:**

Regulation 27-28 imposed certain restrictions on certain plant materials being shipped into South Carolina. This regulation has become the subject of a constitutional challenge, and counsel has advised that enforcement of this regulation should be withdrawn, and/or enforcement of this regulation should be suspended, pending legislative action to revoke and/or amend this regulation, in order to avoid unnecessary litigation and attendant litigation costs. The agency will attempt to promulgate, pursuant to the APA, a non-emergency regulation that will eliminate any potential constitutional issues. In terms of the need for this emergency regulation under S.C. Code Ann. Section 1-23-130(A), the resolution of the above litigation by withdrawing and/or not enforcing Regulation 27-78 is in the best interest of the state, and will prevent imminent harm to the public welfare that would result from needless litigation costs.

**Text:**

27-78. *Phytophthora ramorum* Quarantine

27.78. Repealed.

Document No. 4091  
**DEPARTMENT OF AGRICULTURE**  
 CHAPTER 5  
 Statutory Authority: 1976 Code Section 46-21-20

5-460 through 5-483. Seeds

**Synopsis:**

The Department of Agriculture proposes these amendments to clarify and to provide a more efficient process for regulating and analyzing seed products sold in South Carolina, as authorized by S.C. Code, Title 46, Chapter 21. These regulations will address the standards and regulations for agricultural, grass and flower seed varieties sold in South Carolina.

The Notice of Drafting was published in the *State Register* on July 24, 2009.

**Instructions:**

Amend R.5-460 et seq. as modified below. All other items and sections remain unchanged.

**Text:**

ARTICLE 12

SEEDS

5-460. Standard for Agricultural Seeds.

A. All agricultural seeds shall have a standard germination of 75% except:

- (1) Crotalaria;
- (2) Dallis grass;
- (3) Centipede grass;
- (4) Pensacola Bahia grass;
- (5) Cottonseed;
- (6) Peanuts.

B. Agricultural seeds showing a germination less than 75% and above 49% shall be marked "Below Standard in Germination".

C. Agricultural seeds showing less than 50% germination cannot be sold for planting purposes in South Carolina.

D. Hard seed of legumes may be included in the percentage of these standards.

5-461. Exception.

A. The germination standard for Crotalaria shall be 65%.

(1) Crotalaria showing less than 65% and above 39% in germination must be labeled "Below Standard in Germination."

(2) Crotalaria showing less than 40% germination cannot be sold in South Carolina.

(3) Hard seed of Crotalaria may be included in the percentage of these standards.

B. The germination standard for Dallis grass, Centipede grass and Pensacola Bahia grass shall be 60%.

(1) Dallis grass, Centipede grass and Pensacola Bahia grass showing less than 60% and above 39% in germination must be labeled "Below Standard in Germination."

(2) Dallis grass, Centipede grass and Pensacola Bahia grass showing less than 40% germination cannot be sold in South Carolina.

### 30 FINAL REGULATIONS

C. The germination standard for cottonseed and peanuts shall be 70%.

(1) Cottonseed and peanuts showing less than 70% and above 49% in germination must be labeled "Below Standard in Germination".

(2) Cottonseed and peanuts showing less than 50% germination cannot be sold for planting purposes in South Carolina.

5-462. Noxious Weeds.

A. Noxious weeds shall be seeds or bulbs of the following:

Single		
Common Name	Scientific Name	Limitations
Balloonvine	Cardiosperm Halicacabum L.	Prohibited
Bermuda Grass	Cynodon Dactylon	200 per lb.
Bindweed Field	Convolvulus Arvensis	Prohibited
Bindweed Hedge	Convolvulus Sepium	Prohibited
Blessed Thistle	Onicus Benedictus	27 per lb.
Blue Weed	Helianthus Ciliaris	200 per lb.
Bracted Plantain	Plantago Aristat	200 per lb.
Buckhorn Plantain	Plantago Lanceolata	200 per lb.
Canada Thistle	Cirsium Arvense	100 per lb.
Cheats or Chess	Bromus, Secalinus, and/or Commutatus	200 per lb.
Cocklebur	Xanthium Spp	1 per lb.
Corn Cockle	Argostemma Githago	200 per lb.
Darnel	Lolium Temulentum	200 per lb.
Docks	Rumex Spp	100 per lb.
Dodders	Cuscuta Spp	100 per lb.
Giant Foxtail	Setaria Faberi	Prohibited
Horsenettle	Solanum Carolinese	200 per lb.
Itchgrass	Rottboellia exaltata	Prohibited
Johnson Grass	Sorghum halepense	10 per lb.
Nightshade	Solanum Elaeagnifolium	200 per lb.
Nut Grass	Cyperus Rotundus	Prohibited
Perennial Sweet - Type Sudangrass and Sorghum		10 per lb.
Plantain, bracted	Plantago aristata	200 per lb.
Plantain, buckhorn	Plantago lanceolata	200 per lb.
Purple Moonflower	Calonyction Muricatum	9 per lb.
Quack Grass	Agropyron Repens	100 per lb.
Red Rice	Oryza Sativa Var	200 per lb.
Russian Knapweed	Centaurea Picris	100 per lb.
Sandbur	Cenchrus Pauciflorus	1 per lb.
Serrated tussock	Nassella Trichotoma	Prohibited
Sheep Sorrel	Rumex Acetosella	100 per lb.
Sorghum Alnum	Sorghum alnum	10 per lb.
Sorghum	Sorghum spp.	10 per lb.
Tropical Soda Apple	Salahum Viarum Duhal	Prohibited
Wild Mustard and/or Turnips	Brassica Spp	50 per lb.
Wild Oats	Avena Fatua	50 per lb.

Wild Onions	Allium Spp	18 per lb.
Wild Radish	Raphanus Raphanistrum	50 per lb.
Witchweed	Striga Asiatica	Prohibited

B. The single limitation listed above is the maximum number allowable for that weed with not over 200 total noxious weed seeds singly or collectively in any combination.

C. The rate of occurrence of all noxious weeds present shall be listed on the tag or label in name and number per pound of seed.

5-463. Prohibited Seeds.

A. Agricultural seeds will be prohibited from sale when such seeds contain more than two (2) per cent by weight of all weed seed.

5-464. Standard Germination for Vegetable Seeds.

A. All vegetable seeds shall show the percentage of germination and the minimum for "Standard Germination" for vegetable seeds shall be as follows:

Kind	Percentage
Anise	50%
Artichokes	60%
Asparagus	70%
Basil, Sweet	70%
Beans, Asparagus	75%
Beans, Garden	70%
Beans, Lima	70%
Beans, Runner	75%
Beets	65%
Broadbean	75%
Broccoli	75%
Brussels Sprouts	70%
Burdock, Great	60%
Cabbage	75%
Cantaloupe	75%
Caraway	55%
Cardoon	60%
Carrots	55%
Cauliflower	75%
Celery or Celeric	55%
Chervil, Salad	65%
Chicory	65%
Chives	50%
Citron	65%
Collards	80%
Coriander	70%
Corn, Pop	75%
Corn, sweet	75%
Cowpeas	75%
Cress, garden	75%
Cress, upland	60%
Cress, water	40%

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Cucumber	80%
Dandelion	60%
Eggplant	60%
Endive	70%
Fennel, Florence	60%
Fennel, Sweet	50%
Fetticus (corn salad)	70%
Kale	75%
Kohlrabi	75%
Leek	60%
Lettuce	80%
Marjoram, Sweet	50%
Muskmelon	75%
Mustard	75%
Okra	50%
Onion	70%
Oregano	60%
Pak-Choi	75%
Parsley	60%
Parsnip	60%
Peas, garden	80%
Peanut	60%
Pepper	55%
Pe-Tsai	75%
Pumpkin	75%
Radish	75%
Rhubarb	60%
Roquette	60%
Rosemary	30%
Rutabaga	75%
Sage	60%
Salsify	75%
Savory, Summer	55%
Sorrel	65%
Soybean	75%
Spinach (except N. Z.)	60%
Spinach, N. Z.	40%
Squash	75%
Swiss Chard	65%
Thyme	50%
Tomato	75%
Tomato, husk	50%
Turnip	80%
Watermelon	70%
All other kinds	50%

B. Vegetable seeds which have a germination percentage less than the standard and not less than 50% of the standard shall have the words "Below Standard in Germination" clearly shown in a conspicuous place on the label or the face of the container in type not smaller than 8 point. The seed shall also be labeled to show the percentage of germination, the percentage of purity and the variety.

C. Vegetable seeds showing less than 50% of the standard germination cannot be sold in South Carolina.

5-465. Tolerances.

A. The word “approximate” as used in the law is hereby defined as a slight variation occurring between the analysis given on the tag or label and that found upon test of the official samples drawn therefrom. Seed shall be considered misbranded within the meaning of the law when the difference in the purity or germination analysis between that guaranteed and that found exceeds the officially recognized tolerances for seed testing.

5-466. Labeling.

A. All agricultural, vegetable and flower seeds offered or exposed for sale in South Carolina shall bear a standard tag or label except seed sold across the counter from a bin or container when such a bin or container carries a standard tag or label in full view of the purchaser.

B. The vendor of seed will be held responsible for declaring the variety of all seed sold or exposed for sale.

5-467. Labeling of Seed Corn.

A. Sale of hybrid seed corn containing T-cytoplasm is prohibited unless the percentage of T-cytoplasm is clearly indicated on the label.

5-468. Inconsistent Statements.

A. No statement will be permitted on the tag or container which conflicts with the requirements of the standard tag.

5-469. Advertisement.

A. The name of the South Carolina Department of Agriculture must not be used for advertising purposes in connection with reports on samples.

5-470. Seed for Cleaning or Processing.

A. Seed transported to a cleaning or processing establishment shall bear a tag stating “Seed for Cleaning or Processing.”

5-471. Certified Seed.

A. Certified seeds shall mean seeds as defined by Section 46-21-10(f).

5-472. Mixtures.

A. A mixture means seed consisting of more than one kind or variety, each present in excess of five per cent (5%) of the whole.

5-473. Origin.

A. The origin shall be required only when known, in accordance with Section 46-21-15(30).

5-474. Date of Test.

All seed sold, offered or exposed for sale in this State shall show on the label the month and year in which the germination test was completed.

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(1) No more than nine calendar months for agricultural seed, except cool season grasses, shall have elapsed between the last day of the month in which the germination test was completed and date of sale or exposure for sale of seed.

(2) No more than fifteen calendar months for cool season grasses, Kentucky Bluegrass, Red Fescue, Chewing Fescue, Hard Fescue, Tall Fescue, Perennial Ryegrass, Intermediate Ryegrass, Annual Ryegrass, Colonial Bentgrass, Creeping Bentgrass and mixtures thereof, shall have elapsed between the last day of the month in which the germination test was completed and date of sale or exposure for sale of seed.

(3) No more than twelve calendar months for vegetable seed shall have elapsed between the last day of the month in which the germination test was completed and date of sale or exposure for sale of seed.

(4) No more than twelve calendar months for flower seed shall have elapsed between the last day of the month in which the germination test was completed and date of sale or exposure for sale of seed.

(5) Hermetically sealed seed as defined in Section 46-21-211.

5-475. Method of Testing.

A. The methods of testing seed shall be as near as practical those adopted by the Association of Official Seed Analysts of North America.

5-476. Sampling.

A. The manner of sampling shall be as follows:

(1) Bulk: Bulk seeds or screenings shall be sampled by inserting a long probe or thrusting the hand into the bulk as circumstances require in at least seven uniformly distributed parts of the quantity being sampled.

(2) Seed in bags.

(a) When more than one core is drawn from a bag, follow different paths. When more than one handful is taken from a bag, take them from well-separated points.

(b) For lots of one to six bags, sample each bag and take a total of at least five cores or handfuls.

(c) For lots of more than six bags, sample five bags plus at least 10 percent of the number of bags in the lot. Round numbers with decimals to the nearest whole number. Regardless of the lot size, it is not necessary to sample more than 30 bags.

Examples: No. bags in lots	7	10	23	50	100	200	300	400
No. bags to sample	6	6	7	10	15	25	30	30

(3) Packets: In sampling seed in packets, entire unopened packets shall be taken.

5-477. Size of Sample.

A. The following are minimum weights of samples of seed to be submitted for analysis, test, or examination:

(1) Two ounces of grass seed not otherwise mentioned, white or alsike clover, or seeds not larger than these.

(2) Five ounces of red or crimson clover, alfalfa, rye grasses, brome grasses, millet, flax, rape, lespedeza, or seeds of similar size.

(3) One pound of Sudan grass, sorghum, proso, hemp, or seeds of similar size.

(4) Two pounds of cereals, vetches or seeds of similar size or larger.

5-478. Variety.

A. When submitting samples for test the kind and variety should be given when known.

5-479. Information on Tags.

A. The standard tag for agricultural seed shall contain the following information in the format shown:

Kind & Variety _____	
Origin _____	Net Wt. _____ Lot No. _____
Pure Seed _____%	Germination _____% Inert Matter _____%
Hard or Dormant Seed _____%	Other Crop Seed _____%
Coating Material _____%	Treatment _____
Total Germ. & Hard or Dormant Seed _____%	Weed Seed _____%
Name & Number of Noxious Weed Seed / lb. _____	
Date of Test _____, 20____	
Name _____	
Address _____	

B. The standard tag for mixed agricultural seed shall contain the following information in the format shown:

Kind Mixture _____						
Origin _____		Net Wt. _____		Lot No. _____		
Name & Variety	Pure Seed %	Germ. %	Hard or Dormant %	Germ. + Hard %	Date of Test	Origin
Inert Matter _____% Other Crop Seed _____% Weed Seed _____%						
Coating Material _____% Treatment _____						
Name & Number of Noxious Weed Seed / lb. _____						
Name _____						
Address _____						

C. The standard tag for vegetable seed shall contain the following information in the format shown:

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Kind & Variety _____
Origin _____ Net Wt. _____ Lot No. _____
Germination ____% Hard or Dormant Seed ____% Germ. + Hard ____%
Treatment _____ Date of Test _____, 20__
Name _____
Address _____

D. The standard tag for flower seed shall contain the following information in the format shown:

Kind & Variety or Type and Performance Characteristics _____
Origin _____ Net Wt. _____ Lot No. _____
Germination ____% Hard or Dormant Seed ____% Germ. + Hard ____%
Treatment _____ Date of Test _____, 20__
Name _____
Address _____

**5-480. Seed in Hermetically Sealed Containers.**

A. For agricultural and vegetable seeds labeled and packed in hermetically sealed containers, the nine months limitation of date of test in 5-474 is extended as provided therein.

B. The germination test for agricultural and vegetable seeds shall have been completed within thirty-six month period, exclusive of the calendar month in which the test was completed, if the following conditions are met:

- (1) The seed was packaged within nine (9) months after harvest.
- (2) The Water Vapor penetration standards are referenced to and meet the Hermetically-sealed containers section of the Federal Seed Act Regulations Part 201 section 201.36c.

C. The container is conspicuously labeled in not less than 8 point type to indicate:

- (1) That the container is hermetically sealed;
- (2) That the seed has been preconditioned as to moisture content;
- (3) The calendar month and year in which the germination test was completed as well as all labeling information required in Article 2 of the South Carolina Seed Law;
- (4) "Germination test valid until (month, year)" may be used. (Not to exceed 36 months from date of test.);
- (5) Hermetically sealed seed is not relabeled as hermetically sealed.

**5-481. Treated Seeds.**

A. The term "treated" means that the seed has been given an application of a substance or subjected to a process designed to reduce, control, or repel certain disease organisms, insects, or other pests attacking such seeds or seedlings grown therefrom, or to improve the planting value of the seed.

B. All seeds which are treated, as defined above, shall be labeled to show the following information:

- (1) A statement in no less than (8) point type indicating that seed has been treated.

(2) The commonly accepted coined, chemical or abbreviated chemical (generic) name of a substance or a description of any process (other than application of a substance) used in such treatment in type no smaller than eight (8) point.

(3) A caution statement, if the substance used in such treatment in the amount remaining with the seed is harmful to humans or other vertebrate animals as follows:

(a) Seed treated with a mercurial or similarly toxic substance, if any amount remains with the seed, shall be labeled to show a statement such as "Poison," "Poison Treated," or "Treated with Poison." The word "Poison" shall be in type no smaller than eight (8) point and shall be in red letters on a distinctly contrasting background. In addition, the label shall show a representation of a skull and crossbones at least twice the size of the type used for the name of the substance and the statement indicating that the seed have been treated.

(b) Seed treated with other harmful substances (other than mercurials or similarly toxic substances), if the amount remaining with the seed is harmful to humans or other vertebrate animals, shall be labeled to show a caution statement, in type no smaller than eight (8) point, such as "Do not use for food, feed, or oil."

(c) All food seed, including wheat, corn, oats, rye, barley, and sorghum, but not limited thereto, when treated with poison, shall be discolored by mixing therewith a coloring material contrasting with the natural color of the seed, in sufficient amount to prevent inadvertent use as food for man or animal.

(4) If the seed is treated with an inoculant, the date beyond which the inoculant is not considered effective (date of expiration).

(5) The required information may be printed on a separate label, or on the same label bearing the analysis information, or it may be printed on the container of seed in a conspicuous manner.

5-482. Fees and Services.

A. Fee Schedule:

(1) Licensing in accordance with Section 46-21-40:

\$10,000.01 or more	\$500
\$10,000 - \$5,000.01	\$200
\$ 5,000 - \$2,500.01	\$100
\$ 2,500 or less	\$50

B. Explanation of Services:

(1) Official samples, as defined by S.C. Code § 46-21- 15(29), will incur no charge for testing.

(2) Submitted samples, as defined by S.C. Code § 46-21-15(38), will incur a testing fee according to the fee schedule listed below, unless submitted by a S.C. citizen or farmer.

(3) Certified samples, as defined by S.C. Code § 46-21 15(6), will incur no charge for testing.

C. Explanation of Tests:

(1) A germination test consists of the determination of the percent germination.

(2) A purity test consists of the determination of the percent pure seed, the percent weed seed, the percent other crop and the percent inert matter.

D. (1) Agricultural Seed:

Seed Type	Testing Fee			Minimum Sample Size	Days Required for Germination
	Purity	Germination	Purity and Germination		
Alfalfa	\$12	\$12	\$24	5 oz.	7
Bahia Grass	\$15	\$15	\$30	5 oz.	28
Barley	\$12	\$12	\$24	2 lb.	7
Bean, Velvet	\$12	\$12	\$24	2lb.	14
Bermuda Grass	\$15	\$15	\$30	2 oz.	21
Blue Grass	\$15	\$15	\$30	2 oz.	28
Carpet Grass	\$15	\$15	\$30	2 oz.	21
Clovers	\$12	\$12	\$24	5 oz.	21

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Cotton	\$12	\$12	\$24	2 lb.	12
Cowpeas	\$12	\$12	\$24	2 lb.	8
Corn, Field	\$12	\$12	\$24	2 lb.	7
Corn, Pop	\$12	\$12	\$24	8 oz.	7
Crotalaria	\$12	\$12	\$24	6 oz.	10
Dallis Grass	\$15	\$15	\$30	5 oz.	21
Fescues	\$15	\$15	\$30	5 oz.	21
Lespedezas	\$12	\$12	\$24	5 oz.	28
Lupine	\$12	\$12	\$24	2 lb.	10
Millets	\$12	\$12	\$24	1 lb.	14
Oats	\$12	\$12	\$24	2 lb.	10
Orchard Grass	\$15	\$15	\$30	5 oz.	21
Peanut	\$12	\$12	\$24	2 lb.	10
Peas, Field	\$12	\$12	\$24	1 lb.	8
Redtop	\$15	\$15	\$30	2 oz.	10
Rescue Grass	\$15	\$15	\$30	1 lb.	28
Rice	\$12	\$12	\$24	2 lb.	14
Rye	\$12	\$12	\$24	2 lb.	10
Ryegrass	\$15	\$15	\$30	5 oz.	14
Sesame	\$12	\$12	\$24	5 oz.	6
Sorghum	\$12	\$12	\$24	1 lb.	10
Soybean	\$12	\$12	\$24	2 lb.	8
Sudan Grass	\$12	\$12	\$24	1 lb.	10
Timothy	\$15	\$15	\$30	2 oz.	10
Vetches	\$12	\$12	\$24	2 lb.	14
Wheat	\$12	\$12	\$24	2 lb.	10

(2) Vegetable Seed:

Seed Type	Testing Fee			Minimum Sample Size	Days Required for Germination
	Purity	Germination	Purity and Germination		
Asparagus	\$12	\$12	\$24	2 oz.	21
Beans, except Lima	\$12	\$12	\$24	6 oz.	8
Beans, Lima	\$12	\$12	\$24	8 oz.	9
Beans, Runner	\$12	\$12	\$24	6 oz.	9
Beets	\$12	\$12	\$24	2 oz.	14
Broccoli	\$12	\$12	\$24	2 oz.	10
Brussels Sprouts	\$12	\$12	\$24	2 oz.	10
Cabbage	\$12	\$12	\$24	2 oz.	10
Carrots	\$12	\$12	\$24	1 oz.	21
Cauliflower	\$12	\$12	\$24	2 oz.	10
Celery or Celeriac	\$12	\$12	\$24	1 oz.	21
Chicory	\$12	\$12	\$24	1 oz.	14
Citron	\$12	\$12	\$24	3 oz.	14
Collards	\$12	\$12	\$24	2 oz.	10
Corn	\$12	\$12	\$24	4 oz.	7
Cowpeas, Crowder	\$12	\$12	\$24	8 oz.	8
Cress, Garden	\$12	\$12	\$24	1 oz.	10
Cress, Water	\$12	\$12	\$24	1 oz.	14
Cucumber	\$12	\$12	\$24	3 oz.	7

Dandelion	\$12	\$12	\$24	1 oz.	21
Eggplant	\$12	\$12	\$24	1 oz.	14
Endive	\$12	\$12	\$24	1 oz.	14
Kale	\$12	\$12	\$24	2 oz.	10
Kohlrabi	\$12	\$12	\$24	2 oz.	10
Leek	\$12	\$12	\$24	1 oz.	14
Lettuce	\$12	\$12	\$24	1 oz.	7
Muskmelon	\$12	\$12	\$24	3 oz.	10
Mustard	\$12	\$12	\$24	2 oz.	7
Okra	\$12	\$12	\$24	4 oz.	14
Onion	\$12	\$12	\$24	1 oz.	10
Parsley	\$12	\$12	\$24	1 oz.	28
Parsnip	\$12	\$12	\$24	1 oz.	28
Peas	\$12	\$12	\$24	6 oz.	8
Pepper	\$12	\$12	\$24	1 oz.	14
Pumpkin	\$12	\$12	\$24	4 oz.	7
Radish	\$12	\$12	\$24	2 oz.	6
Rutabaga	\$12	\$12	\$24	2 oz.	14
Salsify	\$12	\$12	\$24	2 oz.	10
Sorrel	\$12	\$12	\$24	1 oz.	14
Soybean	\$12	\$12	\$24	1 lb.	8
Spinach, N. Zealand	\$12	\$12	\$24	4 oz.	28
Squash	\$12	\$12	\$24	4 oz.	7
Swiss Chard	\$12	\$12	\$24	2 oz.	14
Tomato	\$12	\$12	\$24	1 oz.	14
Turnip	\$12	\$12	\$24	2 oz.	7
Watermelon	\$12	\$12	\$24	4 oz.	14
Flowers	\$15	\$15	\$30	400 seed	

NOTE: The number of days for a germination test does not include the number of days required to get the sample to the office and a report back through the mail.

(3) Special Tests:

Test Type	Testing Fee	Minimum Sample Size
Accelerated Aging (Vigor)	\$15	2 pounds
Cool Test (Cotton)	\$15	2 pounds
Round Up Ready	\$15	2 pounds
Seed Count Per LB.	\$12	See chart above
*Tetrazolium Test (TZ)	\$15	See chart above

\*Tetrazolium Test – This is not an official germination test and may not be used to label seed for germination.

(4) Additional Charges:

- (a) Charge for Mixtures – Total charge will be based on fee for each component of the mixture.
- (b) Unclean Samples – Additional charge of \$8.00 will be charged for unclean samples.
- (c) Coated/Pelleted Samples – Additional charge of \$8.00 will be charged for coated/pelleted samples requiring a Purity test.

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Note: For all testing services, any seed not listed will be charged according to other seed of a similar size and/or type.

### 5-483. Flower Standards

A. The kinds of flower seeds listed below are those for which standard testing procedures have been prescribed and which are therefore required to be labeled in accordance with the germination labeling provisions Section 46-21-210 et al.

- (1) The percentage listed opposite each kind is the germination standard for that kind.
- (2) For the kinds marked with an asterisk, the percentage is the total of percentage germination and percentage hard seed.
- (3) For other kinds, it is the percentage germination.

SEED KIND	PERCENT
Archillea (The Pearl) - <i>Achillea ptarmica</i>	50
African Daisy - <i>Dimorphotheca aurantiaca</i>	55
African Violet - <i>Saintpaulia</i> spp	30
Ageratum - <i>Ageratum mexicanum</i>	60
Agrostemma (rose campion) - <i>Agrostemma coronaria</i>	65
Alyssum - <i>Alyssum compactum</i> , <i>A. maritimum</i> , <i>A. procumbens</i> , <i>A. saxatile</i>	60
Amaranthus - <i>Amaranthus</i> spp	65
Anagalis (primpernel) - <i>Anagalis arvensis</i> , <i>Anagalis coerulea</i> , <i>Anagalis grandiflora</i>	60
Anemone - <i>Anemone coronaria</i> , <i>A. pulsatilla</i>	55
Angel's Trumpet - <i>Datura arborea</i>	60
Arabis - <i>Arabis alpina</i>	60
Arctotis (African lilac daisy) - <i>Arctotis grandis</i>	45
Armeria - <i>Armeria formosa</i>	55
Asparagus, fern - <i>Asparagus plumosus</i>	50
Asparagus, sprenger, <i>Asparagus sprengeri</i>	55
Aster, China - <i>Callistephus chinensis</i> ; except Pompon, Powderpuff, and Princess types	55
Aster, China - <i>Callistephus chinensis</i> ; Pompon, Powderpuff and Princess types	50
Aubretia - <i>Aubretia deltoides</i>	45
Baby Smilax - <i>Asparagus asparagoides</i>	25
Balsam - <i>Impatiens balsamina</i>	70
Begonia - ( <i>Begonia</i> fibrous rooted)	60
Begonia - ( <i>Begonia</i> tuberous rooted)	50
Bells of Ireland - <i>Molucella laevis</i>	60
Brachycome (swan river daisy) - <i>Brachycome iberidifolia</i>	60
Browallia - <i>Browallia elata</i> and <i>B. speciosa</i>	65
Bupthalam (sunwheel) - <i>Bupthalam salicifolium</i>	60
Calceolaria - <i>Calceolaria</i> spp	60
Calendula - <i>Calendula officinalis</i>	65
California Poppy - <i>Eschscholtzia californica</i>	60
Calliopsis - <i>Coreopsis bicolor</i> , <i>C. drummondii</i> , <i>C. elegans</i>	65
Campanula:	
Canterbury Bells - <i>Campanula medium</i>	60
Cup and Saucer Bellflower - <i>Campanula medium calycanthema</i> .	60
Carpathian Bellflower - <i>Campanula carpatica</i>	50

Peach Bellflower - <i>Campanula persicifolia</i>	50
Candytuft, Annual - <i>Iberis amara</i> , <i>I. umbellata</i>	65
Candytuft, Perennial - <i>Iberis gibraltarica</i> , <i>I. sempervirens</i>	55
Castor Bean - <i>Ricinus communis</i>	60
Cathedral Bells - <i>Cobaea scandens</i>	65
Celosia - <i>Celosia argentea</i>	65
Centaurea: Basket Flower - <i>Centaurea americana</i> , Cornflower - <i>C. cyanus</i> , Dusy Miller - <i>C. candidissima</i> , Royal Centaurea <i>C. imperialis</i> Sweet Sultan - <i>C. moschata</i> , Velvet Centaurea <i>C. gymnocarpa</i>	60
Cerasium (snow-in-summer) <i>Cerastium biebersteini</i> and <i>C. tomentosum</i>	65
Chinese Forget-me-not - <i>Cynoglossum amabile</i>	55
Chrysanthemum, Annual - <i>Chrysanthemum carinatum</i> , <i>C. coronarium</i> , <i>C. segetum</i>	50
Cineraria - <i>Senecio cruentus</i>	60
Clarkia - <i>Clarkia elegans</i>	65
Cleome - <i>Cleome gigantea</i>	65
Coleus - <i>Coleus blumei</i>	65
Columbine - <i>Aquilegia</i> spp.	50
Coral Bells - <i>Heuchera sanguinea</i>	55
Coreopsis, Perennial - <i>Coreopsis lanceolata</i>	40
Corn, ornamental - <i>Zea mays</i>	75
Cosmos: Sensation, Mammoth and Crested types - <i>Cosmos</i> <i>bipinnatus</i> ; Klondyke type - <i>C. sulphurea</i>	65
Crossandra - ( <i>Crossandra infundibuliformis</i> )	50
Dahlia - <i>Dahlia</i> spp	55
Daylily - <i>Hemerocallis</i> spp	45
Delphinium, Perennial- <i>Belladonna</i> and <i>Bellamosum</i> types	
Cardinal Larkspur - <i>Delphinium cardinale</i> ; <i>Chinensis</i> types	
Pacific Giant, Gold Medal and other hybrids of <i>D. elatum</i>	55
Dianthus: Carnation - <i>Dianthus caryophyllus</i>	60
China Pinks - <i>Dianthus chinensis</i> , <i>heddewigi</i> , <i>heddensis</i>	70
Grass Pinks - <i>Dianthus plumarius</i>	60
Maiden Pinks - <i>Dianthus deltoids</i>	60
Sweet William - <i>Dianthus barbatus</i>	70
Sweet Wivelsfield - <i>Dianthus allwoodi</i>	60
Didiscus - (blue lace flower) - <i>Didiscus coerulea</i>	65
Doronicum (leopard's bane) - <i>Doronicum caucasicum</i>	60
Dracaena - <i>Dracaena indivisa</i>	55
Dragon Tree - <i>Dracaena draco</i>	40
English Daisy - <i>Bellis perennis</i>	55
Flowering Maple - <i>Abutilon</i> spp	35
Flax - Golden flax ( <i>Linum flavum</i> ); Flowering flax <i>L.</i> <i>randiflorum</i> ; Perennial flax, <i>L. perenne</i>	60
Foxglove - <i>Digitalis</i> spp	60
Gaillardia, Annual - <i>Gaillardia pulchella</i> ; <i>G. picta</i> ; Perennial - <i>G.</i>	45

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grandiflora	
Gerbera (transvaal daisy) - <i>Gerbera jamesoni</i>	60
Geum - <i>Geum</i> spp	55
Gilia - <i>Gilia</i> spp	65
Gloriosa daisy (rudbeckia) - <i>Echinacea purpurea</i> and <i>Rudbeckia hirta</i>	60
Gloxinia - ( <i>Sinningia speciosa</i> )	40
Godetia - <i>Godetia amoena</i> , <i>G. grandiflora</i>	65
Gourds: Yellow Flowered - <i>Cucurbita pepo</i> ; White Flowered – <i>Lagenaria siceraria</i> ; Dishcloth - <i>Luffa cylindrica</i>	70
Gypsophila: Annual Baby's Breath - <i>Gypsophila elegans</i> ; Perennial Baby's Breath - <i>G. paniculata</i> , <i>G. pacifica</i> <i>G. repens</i>	70
Helenium - <i>Helenium autumnale</i>	40
Helichrysum - <i>Helichrysum monstrosum</i>	60
Heliopsis - <i>Heliopsis scabra</i>	55
Heliotrope - <i>Heliotropium</i> spp.	35
Helipterum ( <i>Acroclinium</i> ) <i>Helipterum roseum</i>	60
Hesperis (sweet rocket) - <i>Hesperis matronalis</i>	65
*Hollyhock - <i>Althea rosea</i>	65
Hunnemania (mexican tulip poppy) - <i>Hunnemania fumariaefolia</i>	60
Hyacinth bean - <i>Dolichos lablab</i>	70
Impatiens - <i>Impatiens hostii</i> , <i>I. sultani</i>	55
*Ipomea - Cypress Vine - <i>Ipomea quamoclit</i> ; Moonflower – <i>I. noctiflora</i> ; Morning Glories, Cardinal Climber, Hearts and Honey Vine - <i>Ipomea</i> spp	75
Jerusalem cross (maltese cross) - <i>Lychnis chalconica</i>	70
Job's Tears - <i>Coix lacrymajobi</i>	70
Kochia - <i>Kochia childsi</i>	55
Larkspur, Annual - <i>Delphinium ajacis</i>	60
Lantana - <i>Lantana camara</i> , <i>L. hybrida</i>	35
Lilium (regal lily) - <i>Lilium regale</i>	50
Linaria - <i>Linaria</i> spp	65
Lobelia, Annual - <i>Lobelia erinus</i>	65
Lunaria, Annual - <i>Lunaria annua</i>	65
*Lupine - <i>Lupinus</i> spp	65
Marigold - <i>Tagetes</i> spp	65
Marvel of Peru - <i>Mirabilis jalapa</i>	60
Matricaria (feverfew) - <i>Matricaria</i> spp	60
Mignonette - <i>Reseda odorata</i>	55
Myosotis - <i>Myosotis alpestris</i> , <i>M. oblongata</i> , <i>M. palustris</i>	50
Nasturtium - <i>Tropaeolum</i> spp	60
Nemesia - <i>Nemesia</i> spp	65
Nemophila - <i>Nemophila insignis</i>	70
Nemophila, spotted - <i>Nemophila maculata</i>	60
Nicotiana - <i>Nicotiana affinis</i> , <i>N. sanderae</i> , <i>N. sylvestris</i>	65
Nierembergia - <i>Nierembergia</i> spp	55
Nigella - <i>Nigella damascena</i>	55
Pansy - <i>Viola tricolor</i>	60
Penstemon - <i>Penstemon barbatus</i> , <i>P. grandiflorus</i> , <i>P. laevigatus</i> , <i>P. pubescens</i> .	60
Petunia - <i>Petunia</i> spp	45

Phacelia - Phacelia campanularia, P. minor, P. tanacetifolia	65
Phox, Annual - Phlox drummondi all types and varieties	55
Physalis - Physalis spp	60
Platycodon (balloon flower) - Platycodon grandiflorum	60
Plumbago, cape - Plumbago capensis	50
Ponytail - Beaucarnea recurvata	40
Poppy: Shirley Poppy - Papaver rhoeas; Iceland Poppy - P. nudicaule; Oriental Poppy -P. orientale; Tulip Poppy - P. glaucum	60
Portulace - Portulaca grandiflora	55
Primula (primrose) - Primula spp	50
Pyrethrum (painted daisy) - Pyrethrum coccineum	60
Salpiglossis - Salpiglossis gloxinaeflora, S. sinuate	60
Salvia - Scarlet Sage - Salvia splendens; Mealycup Sage (blue bedder) - Salvia farinacea	50
Saponaria - Saponaria ocymoides, S. vaccaria	60
Scabiosa, Annual - Scabiosa atropurpurea	50
Scabiosa, Perennial - Scabiosa caucasica	40
Schizanthus - Schizanthus spp	60
*Sensitive pant (mimosa) - Mimosa pudica	65
Shasta Daisy - Chrysanthemum maximum C. leucanthemum	65
Silk Oak - Grevillea robusta	25
Snapdragon - Antirrhinum spp	55
Solanum - Solanum spp	60
Statice - Statice sinuata, S. suworonii (flower heads)	50
Stocks: Common - Mathiola incana; Evening Scented - Mathiola bicornis	65
Sunflower - Helianthus spp	70
Sunrose - Helianthemum spp	30
*Sweet Pea, Annual and Perennial other than dwarf bush - Lathyrus odoratus, L latifolius	75
*Sweet Pea, dwarf bush - Lathyrus odoratus	65
Tahoka daisy - Machaeanthera tanacetifolia	60
Thunbergia - Thunbergia alata	60
Torch Flower - Tithonia speciosa	70
Torenia (wishbone flower) - Torenia fournieri	70
Tritoma Kniphofia spp	65
Verbena, Annual - Verbena hybrid	35
Vinca - Vinca rosea	60
Viola - Viola cornuta	55
Virginian stocks - Malcolmia maritime	65
Wallflower - Cheiranthus allioni	65
Yucca (Adam's needle) - Yucca filamentosa	50
Zinna (except Linearis and Creeping) - Zinnia angustifolia, Z. elegans, Z. grandiflora, Z. gracillima, Z. haegeana, Z. multiflora, Z. pumila	65
Zinnia, Linearis and Creeping - Zinnia linearis, Sanvitalia procumbens	50
All other kinds	50

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### Fiscal Impact Statement:

No additional state funding is needed to implement these proposed regulations.

### Statement of Rationale:

These proposed amendments are primarily based upon the recommended model language as put forth by the American Seed Control Officials, which is a national organization made up of members who are dedicated to the improvement of the seed industry. Adopting these changes will make the regulation and analysis of seed products sold more efficient and will ensure high quality seed products are sold in South Carolina.

Document No. 4128  
**BUDGET AND CONTROL BOARD**  
**OFFICE OF HUMAN RESOURCES**  
CHAPTER 19  
Statutory Authority: Act 29 of 2009

19-700. State Human Resources Regulations

### Synopsis:

Act 29 of 2009 authorizes the State Budget and Control Board, Office of Human Resources to amend human resource regulations as it determines efficient to implement and transition to the South Carolina Enterprise Informational System. Further, Act 29 provides that any such changes must be published in the State Register. Accordingly, the State Budget and Control Board, Office of Human Resources has submitted for publication the following amendments to Chapter 19, South Carolina Code of Regulations.

### Instructions:

Replace R.19-700 through R.19-720 to the regulations.

### Text:

#### 19-700 DEFINITIONS

The following definitions should be used in conjunction with these regulations.

**ACADEMIC PERSONNEL** - presidents, provosts, vice-presidents, deans, teaching and research staffs, and others of academic rank employed by the State educational institutions of higher learning or medical institutions of education and research.

**AGENCY** - a department, institution of higher learning, board, commission, or school that is a governmental unit of the State of South Carolina. Special purpose districts, political subdivisions, and other units of local government are excluded from this definition.

**AGENCY HEAD** - the person who has authority and responsibility for an agency.

**AGENCY HIRE DATE** - the date an employee begins employment with an agency without any adjustments.

**APPEAL** - the request by a covered employee to the State Human Resources Director for review of an agency's final decision concerning a grievance.

**APPOINTING AUTHORITY** - the agency head or other person or group of persons empowered to employ.

**BASE PAY** - the rate of pay approved for an employee in his position exclusive of any additional pay, such as supplements, bonuses, longevity pay, temporary salary adjustments, shift differential pay, on-call pay, call back pay, special assignment pay, or market or geographic differential pay.

**BASE PERIOD** - the period of time that defines the regular annual schedule of employment (e.g., either a semester, an academic year, or ten months to 12 months).

**BREAK IN SERVICE** - an interruption of continuous State service. An employee experiences a break in State service when the employee (1) separates from State service and is paid for unused annual leave; (2) moves from one State agency to another and is not employed by the receiving agency within 15 calendar days following the last day worked (or approved day of leave at the transferring agency); (3) remains on leave for a period of more than one calendar year; (4) separates from State service as a result of a reduction in force and is not recalled to the original position or reinstated with State government within 12 months of the effective date of the separation; (5) involuntarily separates from State service and the agency's decision is upheld by the State Employee Grievance Committee or by the courts; or (6) moves from a full-time equivalent (FTE) position to a temporary, temporary grant, or time-limited position.

**CALENDAR DAYS** - the sequential days of a year. For purposes of calculating time frames under the State Employee Grievance Procedure Act, the time must be computed by excluding the first day and including the last. If the last day falls on a Saturday, Sunday, or holiday, it must be excluded.

**CLASS** - a group of positions sufficiently similar in the duties performed; degree of supervision exercised or received; minimum requirements of education or experience; and the knowledge, skills, and abilities required that the Office of Human Resources applies the same State class title and the same State salary range to each position in the group.

**CLASS/UNCLASSIFIED STATE TITLE CODE** - the alphanumeric identification assigned to a particular class or unclassified State title.

**CLASSIFIED POSITION** - an FTE position that has been assigned to a class.

**CLASSIFIED SERVICE** - all of those positions in State service which are subject to the position classification plan.

**CLASS SERIES** - a group of classes which are sufficiently similar in kind of work performed to warrant similar class titles, but sufficiently different in level of responsibilities to warrant different pay bands.

**CLASS SPECIFICATION** - the official description approved by the Office of Human Resources providing examples of the kind of work and level of responsibility normally assigned to positions that may be allocated to the class.

**CLASS TITLE** - the name assigned to a class by the Office of Human Resources.

**CLASS/UNCLASSIFIED STATE TITLE DATE** - the date an employee enters his current class or unclassified State title.

**COMPENSATION** - monetary payment for services rendered.

**CONFLICT OF INTEREST** - any action or situation in which an individual's personal or financial interest or that of a member of his household might conflict with the public interest.

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**CONTINUOUS STATE SERVICE** - service with one or more State agencies without a break in service.

**CONTINUOUS STATE SERVICE DATE** - the date that reflects the first date of State employment without a break in service.

**COVERED EMPLOYEE** - a full-time or part-time employee occupying a part or all of an FTE position who has completed the probationary period and has a “meets” or higher overall rating on the employee’s performance evaluation and who has grievance rights. Instructional personnel are covered upon the completion of one academic year except for faculty at State technical colleges upon the completion of not more than two full academic years’ duration. If an employee does not receive an evaluation before the performance review date, the employee must be considered to have performed in a satisfactory manner and be a covered employee. This definition does not include employees in positions such as temporary, temporary grant, or time-limited employees who do not have grievance rights.

**DEMOTION** - the assignment of an employee by the appointing authority from one established position to a different established position having a lower State salary range or, for employees in positions without a State salary range, assignment of a lower rate of pay to the employee except when the employee’s job duties also are decreased for nonpunitive reasons.

**DUAL EMPLOYMENT** - an agreement by which an employee within an FTE position with an employing agency accepts temporary, part-time employment with the same or another agency.

**EMPLOYEE** - any person in the service of an agency who receives compensation from the agency and where the agency has the right to control and direct the employee in how the work is performed.

**EMPLOYING AGENCY** - the agency having primary control over the services of the employee.

**EXEMPT EMPLOYEE** - an employee who is exempt from both the minimum wage and overtime requirements of the Fair Labor Standards Act due to employment in a bona fide executive, administrative, professional, or outside sales capacity.

**FULL-TIME EQUIVALENT or FTE** - a numerical value expressing a percentage of time in hours and of funds related to a particular position authorized by the General Assembly.

**GRIEVANCE** - a complaint filed by a covered employee or the employee’s representative regarding an adverse employment action taken by an agency designated in § 8-17-330 of the South Carolina Code of Laws.

**HOLIDAY** - any holiday recognized by State law or enumerated in § 53-5-10 of the South Carolina Code of Laws.

**HOLIDAY COMPENSATORY TIME** - leave time earned by an employee for work performed on a holiday.

**IN-BAND INCREASE** - a salary increase which is awarded within the pay band assigned to the employee’s class.

**INITIAL EMPLOYMENT** - the employment of a person newly hired into State government in a classified or unclassified FTE position.

**INSTRUCTIONAL PERSONNEL** - for purposes of the State Employee Grievance Procedure Act, employees of an agency that has primarily an educational mission, excluding the State technical colleges and excluding those employees exempted in § 8-17-370(10) of the South Carolina Code of Laws, who work an academic year.

**INVOLUNTARY REASSIGNMENT** - the movement of an employee's principal place of employment in excess of 30 miles from the prior workstation at the initiative of the agency. The reassignment of an employee by an agency in excess of 30 miles from the prior workstation to the nearest facility with an available position having the same State salary range for which the employee is qualified is not considered involuntary reassignment.

**LEAVE ACCRUAL DATE** - the date used to calculate an employee's rate of annual leave earnings, which includes: (1) all State service in an FTE position, including part-time service, adjusted to reflect periods where there was a break in service; and, (2) all service as a certified employee in a permanent position of a school district of this State.

**LEAVE DONOR** - an employee of an employing agency whose voluntary written request for donation of sick or annual leave to the pool leave account of his employing agency is granted.

**LEAVE RECIPIENT** - an employee of an employing agency who has a personal emergency and is selected and approved to receive sick or annual leave from the pool leave account of his employing agency.

**MEDIATION** - an alternative dispute resolution process whereby a mediator who is an impartial third party acts to encourage and facilitate the resolution of a dispute without prescribing what it should be. The process is informal and non-adversarial with the objective of helping the disputing parties reach a mutually acceptable agreement.

**MEDIATION-ARBITRATION** - an alternative dispute resolution process that provides for the submission of an appeal to a mediator-arbitrator, an impartial third party who conducts conferences to attempt to resolve the grievance by mediation and render a decision that is final and binding on the parties if the appeal is not mediated.

**NONEXEMPT EMPLOYEE** - an employee who is covered by the Fair Labor Standards Act and who is, therefore, subject to both the minimum wage and overtime requirements of the law.

**OFFICE OF HUMAN RESOURCES (OHR)** - the central State human resources entity under the Budget and Control Board.

**PAY BAND** - for classified positions, the dollar amount between the minimum and maximum rates of pay to which a class is assigned by OHR.

**PERFORMANCE REVIEW DATE** - the first day which marks the beginning of a new performance review period.

**PERMANENT STATUS** - the status attained by an employee upon completion of a probationary or trial period in a class or an unclassified State title.

**PERSONAL EMERGENCY** - a catastrophic and debilitating medical situation, severely complicated disability, severe accident case, family medical emergency, or other hardship situation that is likely to require an employee's absence from duty for a prolonged period of time and to result in a substantial loss of income to the employee because of the unavailability of paid leave.

**POSITION** - those duties and responsibilities constituting a single job.

**POSITION NUMBER** - a unique number assigned to an FTE position by OHR.

**PROBATIONARY STATUS** - the status of an employee during the probationary period.

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**PROBATIONARY EMPLOYEE** - a full-time or part-time employee occupying a part or all of an FTE position in the initial working test period of employment with the State of 12 months' duration for non-instructional personnel, of the academic year duration for instructional personnel except for those at State technical colleges, or of not more than 2 full academic years' duration for faculty at State technical colleges. An employee who receives an unsatisfactory performance evaluation during the probationary period must be terminated before becoming a covered employee.

**PROBATIONARY PERIOD** - an initial working test period of employment in an FTE position with the State of not more than 12 months' duration for non-instructional personnel or the academic year duration for instructional personnel except for those at State technical colleges, or of not more than 2 full academic years' duration for faculty at State technical colleges. An employee who receives an unsatisfactory performance evaluation during the probationary period must be terminated before becoming a covered employee.

**PROMOTION** - the assignment of an employee by the appointing authority from one established position to a different established position having a higher State salary range or, for positions without a State salary range, having a higher rate of pay. Failure to be selected for a promotion is not an adverse employment action that can be considered as a grievance or appeal.

**PUNITIVE RECLASSIFICATION** - for classified employees, the assignment of a position in one class to a different class with a lower pay band with the sole purpose to penalize the covered employee.

**REALLOCATION** - for classified positions, the assignment of all positions in a class from one pay band to another pay band.

**REASSIGNMENT** - the movement within an agency of an employee from one position to another position having the same State salary range, or the movement of a position within an agency which does not require reclassification.

**RECLASSIFICATION** - for classified positions, the assignment of a position in one class to another class which is the result of a natural or an organizational change in duties or responsibilities of the position.

**REDUCTION IN FORCE** - the procedure used by an agency to eliminate or reduce a portion of one or more filled FTE positions in one or more organizational units within the agency due to budgetary limitations, shortage of work, organizational changes or outsourcing/privatization.

**REEMPLOYMENT** - the employment of a person following a break in service in an FTE position.

**REINSTATEMENT** - the return of an employee to State service without a break in service. Examples include return resulting from: (1) the Reduction in Force procedure; (2) the reversal of a termination under the State Employee Grievance Procedure Act; (3) the settlement of a complaint negotiated under an authorized administrative agency; or, (4) the order of a court.

**REQUESTING AGENCY** - for dual employment purposes, the agency engaging the services of and compensating any employee for services which are clearly not a part of the employee's regular job.

**RESIGNATION** - written or oral notification by an employee of his relinquishment of employment.

**SEPARATION** - action initiated by either the agency or employee which ends the employment relationship.

**SHIFT DIFFERENTIAL** - the additional amount of pay awarded to employees who are assigned to an evening, night, weekend, rotating, or split-shift.

**SLOT NUMBER** - the number used to identify individual positions in a class or unclassified State title within an agency.

**STATE EMPLOYEE GRIEVANCE COMMITTEE** - the committee composed of State employees who are appointed by the Budget and Control Board and who conduct hearings involving appeals filed by covered employees.

**STATE HIRE DATE** - the first date of State employment adjusted to reflect periods of authorized leave without pay of over 30 consecutive work days in any one calendar year and periods when there were breaks in service.

**STATE HUMAN RESOURCES DIRECTOR** - the head of the Office of Human Resources of the State Budget and Control Board, or his designee who is responsible for statewide coordination of human resources programs.

**STATE SALARY RANGE** - the dollar amount between the minimum and maximum rates of pay as established by OHR.

**STATE SERVICE TIME** - the total employment time defined in years, months, and days in which an employee has occupied an FTE position, including part-time service.

**SUPERVISOR** - an individual who directs one or more subordinates and is designated as the rater on those subordinates' performance evaluations.

**SUPPLEMENT** - any compensation, excluding travel reimbursement, from an affiliated public charity, foundation, clinical faculty practice plan, or other public source or any supplement from a private source to the salary appropriated for a State employee and fixed by the State.

**SUSPENSION** - an enforced leave of absence without pay pending investigation of charges against an employee or for disciplinary purposes.

**TEACHERS** - individuals employed in instructional positions for which certification is required.

**TEMPORARY EMPLOYEE** - a full-time or part-time employee who does not occupy an FTE position, whose employment is not to exceed one year, and who is not a covered employee.

**TEMPORARY GRANT EMPLOYEE** - a full-time or part-time employee who does not occupy an FTE position and is hired to fill a position specified in and funded by a federal grant, public charity grant, private foundation grant, or research grant and who is not a covered employee.

**TEMPORARY POSITION** - a full-time or part-time non-FTE position created for a period of time not to exceed one year.

**TEMPORARY SALARY ADJUSTMENT** - compensation not included in an employee's base salary that is awarded for a limited period of time.

**TERMINATION** - for purposes of the State Employee Grievance Procedure Act, the action taken by an agency against an employee to separate the employee involuntarily from employment.

**TIME-LIMITED PROJECT EMPLOYEE** - a full-time or part-time employee who does not occupy an FTE position who is hired to fill a position with time-limited project funding approved or authorized by the appropriate State authority, and who is not a covered employee.

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**TRANSFER** - the movement to a different agency of an employee from one position to another position having the same State salary range, or the movement of a position from one agency to another agency which does not require reclassification.

**TRIAL PERIOD** - the initial working test period of six months required of a covered employee upon movement to any class or an unclassified State title in which the employee has not held permanent status.

**TRIAL STATUS** - the status of a full-time or part-time covered employee who is in the initial working test period of six months following the movement of the employee or the employee's position to any class or unclassified State title in which the employee has not held permanent status.

**UNCLASSIFIED POSITION** - an FTE position that has been assigned to an unclassified State title.

**UNCLASSIFIED SERVICE** - all those positions in the State service which are not subject to the position classification plan.

**UNCLASSIFIED STATE TITLE** - the name assigned to an unclassified position or to a group of similar positions by the Office of Human Resources.

**WORKDAY (AVERAGE)** - the number of hours upon which leave and holidays are based. To determine the number of hours in an average workday, divide the total number of hours an employee is regularly scheduled to work during a week by five (regardless of the number of days the employee actually reports to work).

### **19-701 GENERAL RULES**

#### **SCOPE AND PURPOSE**

Human Resources Regulations 19-700 through 19-720 are applicable to all agencies that are not specifically exempted by § 8-11-260 of the South Carolina Code of Laws.

#### **19-701.01 EQUAL EMPLOYMENT OPPORTUNITY**

The State of South Carolina is an equal employment opportunity employer.

#### **19-701.02 CONSTRUCTION OF WORDS**

All words in these regulations referencing the masculine gender shall apply to females as well. All words in these regulations referencing "written," "in writing," or similar language shall also apply to electronic documents.

#### **19-701.03 STATE AND FEDERAL LAWS**

These Regulations are in addition to the requirements of applicable State and federal laws.

#### **19-701.04 AUDITS BY THE OFFICE OF HUMAN RESOURCES (OHR)**

All information and documentation required by these regulations are subject to audit by OHR.

**19-701.05 CENTRAL HUMAN RESOURCES DATA SYSTEM**

As required by § 8-11-230 of the South Carolina Code of Laws, OHR provides a central database to maintain human resources data on all employees. To maintain the integrity and completeness of the system, all agencies are required to submit appropriate information in a timely manner.

**19-701.06 ETHICS ACT**

The Ethics Act governs the employment of family members and conflicts of interest. For additional information consult the Ethics Act (§ 8-13-100 through § 8-13-1520 of the South Carolina Code of Laws), the Ethics Commission opinions, and the State Ethics Commission.

**A. Employment of Family Members**

No public official, public member, or public employee may cause the employment, appointment, promotion, reassignment, transfer, or advancement of a family member to a State or local office or position in which the public official, public member, or public employee supervises or manages. Family member means an individual who is (a) the spouse, parent, brother, sister, child, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent, or grandchild, or (b) a member of the individual's immediate family. Immediate family is defined as follows:

1. A child residing in a candidate's, public official's, public member's, or public employee's household;
2. A spouse of a candidate, public official, public member, or public employee; or
3. An individual claimed by the candidate, public official, public member, or public employee or the candidate's, public official's, or public employee's spouse as a dependent for income tax purposes.

**B. Conflict of Interest**

No employee may accept any work or compensation that could be reasonably construed as a conflict of interest. Acceptance without proper prior approval of work assignment or compensation that is found to be a conflict of interest may be grounds for disciplinary action or termination. The propriety of an employment situation or compensation for services rendered shall be considered by all parties concerned. Counsel from the Office of the Attorney General or the State Ethics Commission may be necessary to make such determinations.

**19-701.07 EMPLOYMENT OUTSIDE OF STATE GOVERNMENT**

Agencies may adopt policies and procedures for the approval and regulation of jobs held by employees outside of State government. Such policies shall be in accordance with law and the policies and procedures of the Budget and Control Board. An agency may withdraw approval for such secondary employment for reasonable work-related issues.

**19-701.08 SOLICITATION AND DISTRIBUTION**

Solicitations and distributions by agency employees or outside individuals are generally prohibited on agency property during working hours. Each agency is responsible for enforcing this regulation to minimize the disruption of agency business. For example, agencies may allow for fund raising activities by charitable organizations which are certified by the Secretary of State. Any fund raising activities must be approved by the agency head or his designee and conducted under agency supervision.

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### **19-701.09 PILOT PROGRAMS TO CREATE INNOVATION IN STATE GOVERNMENT**

Notwithstanding other provisions of law, the Budget and Control Board is authorized to enter into pilot programs with individual agencies or groups of agencies in order to create innovations in State government. The Budget and Control Board will monitor the findings and results of pilot programs to determine if legislative recommendations should be provided to the General Assembly.

### **19-701.10 FTE POSITIONS**

An employee may not occupy more than one FTE position.

### **19-702 CLASSIFICATION PLAN**

#### **SCOPE AND PURPOSE**

This regulation governs the establishment, maintenance, and administration of the Classification Plan applicable to all positions in the classified service.

#### **19-702.01 STATEMENTS OF POLICY**

- A. The Budget and Control Board designates the State Human Resources Director to administer all Budget and Control Board policies and procedures relating to the Classification Plan.
- B. The Office of Human Resources (OHR) shall establish the Classification Plan to consist of (1) all approved classes of positions, (2) the allocation of each position to its proper class, (3) the class specifications for all approved classes of positions, and (4) the regulations and procedures governing the administration of the Classification Plan.
- C. A class shall be established for each broad category of work and its level of difficulty and responsibility.
- D. Each class shall be defined by a class specification and shall be assigned to an appropriate pay band.
- E. The Office of Human Resources will maintain a list of approved classes.
- F. No action shall be taken to fill any position until it has been authorized by the General Assembly and established in accordance with the Classification Plan. When establishing a classified position, OHR assigns a position number, class title, class code, slot number, and pay band.
- G. A position may move between the classified and unclassified systems provided the agency does not exceed its respective number of classified and unclassified authorized full-time equivalent (FTE) positions. (*Refer to Regulation 19-704.08.*)
- H. The Office of Human Resources is authorized to delegate to agencies by written agreement classification programs that are described in this regulation. Agencies with a delegation agreement shall comply with all State and federal laws and regulations, Budget and Control Board policies and guidelines, and the provisions contained in the delegation agreement. The delegation agreement shall constitute a contractual relationship between OHR and the requesting agency and may be terminated or altered at the discretion of OHR.
- I. The State Human Resources Director shall have the authority to make exceptions to these regulations.

**19-702.02 ADMINISTRATION OF THE PLAN**

- A. The State Human Resources Director shall administer the Classification Plan.
- B. Before an agency fills or alters a position, OHR must approve the following actions:
  - 1. The initial classification of the position;
  - 2. The reclassification of the position; or
  - 3. The creation of new classes and the revision or abolishment of existing classes.
- C. The Office of Human Resources shall coordinate periodic studies to ensure that the Classification Plan is current and uniform.
- D. As requested, agencies must submit to OHR all current position descriptions, organizational charts, and other information as needed to administer the classification plan.

**19-702.03 CLASS SPECIFICATIONS**

- A. Each class specification shall describe in general terms examples of the kind of work and level of responsibility normally assigned positions that may be allocated to the class. The exact duties and responsibilities of positions allocated to any one class may differ; however, all positions allocated to a class shall be sufficiently similar as to kind of work, level of difficulty or responsibility, and qualification requirements.
- B. The Office of Human Resources shall develop class specifications which include the following:
  - 1. Class Title and Code.
  - 2. General Nature of Work - the brief statement summarizing the work to be performed by individuals in this class.
  - 3. Guidelines for Class Use/Distinguishing Characteristics - the brief statement summarizing the level of work performed, the breadth of job responsibilities, and level of supervision given or received. This regulation may be omitted if it is not needed for further clarification.
  - 4. Examples of Work - statements of duties that reflect responsibility common to positions in the class, but not necessarily fully descriptive of any one position in the class.
  - 5. Knowledge, Skills and Abilities - a list of individual characteristics each of which is required for the successful performance of one or more job duties of the class, but not necessarily fully descriptive of the requirements for any one position in the class.
  - 6. Necessary Special Requirements - statements of professional or physical requirements, such as licensure or certification, which may be mandatory for some or all positions in the class. This regulation may be omitted if it is not needed for further clarification.
  - 7. Minimum Requirements - a statement of the minimum combination of education and experience required for the satisfactory performance of the duties of positions in the class, but not necessarily fully descriptive of the education and experience required for any one position in the class. For an equivalency to substitute for the minimum requirements, an agency must submit a written request to the State Human Resources Director for approval.

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- C. Current class specifications shall be maintained by OHR. The Office of Human Resources will notify agencies of any revisions and additions to the class specifications.

### **19-702.04 POSITION DESCRIPTIONS**

- A. The Office of Human Resources shall develop a position description to be used by agencies in describing assigned duties and other information necessary to determine the proper classification of each position. An agency may develop a position description which must be approved by OHR prior to implementation.
- B. The position description shall serve as a record of the duties assigned to an individual position in a class. The position description is used to compare positions to ensure uniformity of classification and as a basis for other human resources decisions.
- C. The position description shall include an accurate description of assigned duties and responsibilities and other pertinent information concerning a position. In contrast to general definitions of the level of work and responsibilities, the position description shall include specific duties and responsibilities assigned to a position, the percentage of time normally devoted to each duty, and the designation of essential and marginal functions.
- D. Position descriptions should be updated to reflect any changes in the assigned job duties and responsibilities or any other pertinent information concerning the position. The supervisor should discuss this updated position description with the employee.
- E. Agencies shall submit current position descriptions to OHR. Current position descriptions shall be maintained by both the agency and OHR.

### **19-702.05 RECLASSIFICATION OF POSITIONS**

- A. An established position may be reclassified from one class to a different class as a result of a natural or an organizational change in the duties or responsibilities of the position.
- B. When reclassifying a filled position, the assignment of new duties or responsibilities should not have the effect of creating a new position.
- C. The Office of Human Resources shall approve all reclassifications.

### **19-702.06 POSITION NUMBERING SYSTEM**

The Office of Human Resources shall develop and maintain a position numbering system that will identify each established position.

## **19-703 JOB VACANCY ANNOUNCEMENTS**

### **SCOPE AND PURPOSE**

This regulation governs the announcement of vacancies in all positions in the classified service.

**19-703.01 STATEMENTS OF POLICY**

- A. The Budget and Control Board designates the Office of Human Resources (OHR) to administer all policies and procedures relating to § 8-11-120 of the South Carolina Code of Laws, Report of Job Vacancies.
- B. Applicants selected for hiring must meet the minimum requirements of the class as established by OHR unless the State Human Resources Director has approved an equivalency.

**19-703.02 REPORT OF JOB VACANCIES**

- A. In addition to any other requirement provided by law, when a job vacancy occurs in any state office, agency, department, or other division of the executive branch of state government, the appointing authority must post a notice with the Office of Human Resources of the State Budget and Control Board and the South Carolina Department of Employment and Workforce at least five working days before employing a person to fill the vacancy. The posting must give notice of the job vacancy, describe the duties to be performed by a person, employed in that position and include any other information required by law.
- B. The notification of a vacancy must include the following data:
  - 1. The title of the position and a summary description of the job responsibilities for the vacant position if needed for clarification;
  - 2. The entry salary or State salary range for the vacant position;
  - 3. The name of the agency where the vacant position exists;
  - 4. A description of the application process for the vacant position;
  - 5. Residency requirements, if any, for the vacant position;
  - 6. The class code and the position number of the vacant position;
  - 7. The minimum requirements for the vacant position, as well as preferred qualifications, if any:
    - a. For the purpose of reporting a job vacancy, minimum requirements are the minimum training and experience requirements that are established by the agency for the vacant position. An agency's minimum training and experience requirements shall be either the minimum requirements that OHR has established for the class or additional requirements established by the agency that are directly related to the successful performance of essential job functions as described on the position description. Any additional requirements must exceed the minimum requirements that OHR has established for the class;
    - b. Preferred qualifications are defined as any other qualifications that are desirable, but not mandatory, for the performance of essential job functions upon entry into the position;
  - 8. The opening and closing dates for applying for the vacant position;
  - 9. A statement certifying that the employing agency is an equal employment opportunity/affirmative action employing agency; and

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10. The normal work schedule and whether the position is full-time or part-time.

### **19-703.03 INTERNAL POSTING AND DISTRIBUTION OF ANNOUNCEMENTS**

The agency must notify employees where the vacancy exists. If the vacancy is a promotional opportunity that requires work experience within the agency to qualify for the promotion, notice of the vacancy must be posted for five workdays, and the notice does not have to be sent to the South Carolina Department of Employment and Workforce or to the Office of Human Resources.

### **19-703.04 EXEMPTIONS TO POSTING JOB ANNOUNCEMENTS**

- A. If an emergency situation exists requiring the vacancy to be filled immediately, certification of the emergency must be made to and approved by the agency head or his designee waiving the posting requirement at the agency and State level.
- B. When an agency decides to promote an employee one organizational level above the employee's current level, the posting requirement may be waived.

### **19-703.05 FREEDOM OF INFORMATION ACT REQUESTS**

A public body may, but is not required to, exempt from disclosure all materials, regardless of form, gathered by the public body during a search to fill an employment position, except that materials relating to the final pool of applicants under consideration comprised of at least three people for a position must be made available for public inspection and copying. In addition to making available for public inspection and copying the materials described in this item, the public body must disclose, upon request, the number of applicants considered for a position. For the purpose of this item, materials relating to the final pool of applicants comprised of at least three people, do not include an applicant's income tax returns, medical records, social security number, or information otherwise exempt from disclosure by § 30-4-40 of the South Carolina Code of Laws.

## **19-704 MOVEMENT AND STATUS**

### **SCOPE AND PURPOSE**

This regulation governs the movement of classified and unclassified employees and positions. This regulation also governs the status of classified and unclassified employees except those employees exempt from coverage under the State Employee Grievance Procedure Act.

### **19-704.01 STATEMENTS OF POLICY**

- A. Movement of a person into or between full-time equivalent (FTE) positions may occur by:
  1. Initial Employment or Reemployment
  2. Promotion
  3. Demotion
  4. Reassignment

## 5. Transfer

*(Refer to Regulations 19-704.02 through 19-704.05.)*

- B. Movement of a position may occur through a reclassification in the classified system or an unclassified State title change in the unclassified system. *(Refer to Regulations 19-704.06 and 19-704.07.)*
- C. A position may move between the classified and unclassified systems provided the agency does not exceed its number of classified and unclassified authorized FTEs. *(Refer to Regulation 19-704.08.)*
- D. A person who moves into or between an FTE position(s) in the classified system must meet minimum requirements established in the class specification. For an equivalency to substitute for the minimum requirements, an agency must submit a written request to the State Human Resources Director for approval.
- E. When a person moves into or between an FTE position(s) or when an employee's position is reclassified or has an unclassified State title change, the following types of status apply:
  - 1. Probationary - The status of a full-time or part-time employee occupying all or part of an FTE position in the initial working test period of employment with the State of:
    - a. Twelve months' duration for noninstructional personnel;
    - b. The academic year duration for instructional personnel (teachers); or
    - c. Not more than two full academic years' duration for faculty at State technical colleges.
  - 2. Covered - The status of a full-time or part-time employee occupying all or part of an FTE position who has completed the probationary period and has a "meets" or higher overall rating on the employee's performance evaluation and has grievance rights. If an employee does not receive an evaluation before the performance review date, the employee must be considered to have performed in a satisfactory manner and be a covered employee.
  - 3. Trial - The status of a full-time or part-time covered employee who is in the initial working test period of six months following the movement of the employee or the employee's position to any class or unclassified State title in which the employee has not held permanent status.

## F. Permanent Status in a Class or Unclassified State Title

An employee shall attain permanent status in a class or unclassified State title upon completion of a probationary or trial period in that class or unclassified State title. Once attained, permanent status in a class or unclassified State title is retained throughout the employee's continuous State service.

## G. Performance Review Dates

For the establishment of an employee's performance review date, refer to Regulations 19-715.02 through 19-715.04.

**19-704.02 INITIAL EMPLOYMENT OR REEMPLOYMENT**

- A. Initial employment is defined as the employment of a person newly hired into State government in a classified or unclassified FTE position.

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B. Reemployment is defined as the employment of a person following a break in service in a classified or unclassified FTE position.

### C. Probationary Status

Upon initial employment or reemployment the employee shall be in probationary status.

### D. Probationary Period

1. An employee in probationary status must complete a probationary period of:
  - a. Twelve months' duration for noninstructional personnel;
  - b. The academic year duration for instructional personnel (teachers); or
  - c. Not more than two full academic years' duration for faculty at State technical colleges.
2. At his discretion, the agency head or his designee may count up to six months of continuous satisfactory service in any temporary capacity toward the employee's probationary period which would result in a reduction in the length of the employee's performance review period.
3. An employee who performs unsatisfactorily during the probationary period must be terminated before becoming a covered employee.

## 19-704.03 PROMOTION

A. Promotion is defined as the assignment of an employee by the appointing authority from one established position to a different established position:

1. Having a higher State salary range; or
2. For positions without a State salary range, having a higher rate of pay.

### B. Probationary or Trial Status

Upon promotion, an employee shall be in probationary or trial status; however, if a covered employee previously held permanent status in the class or unclassified State title to which promoted, the promotion shall be with permanent status in the class or unclassified State title and the employee is not in trial status.

### C. Probationary Period

1. An employee in probationary status who is promoted must complete a probationary period of:
  - a. Twelve months' duration for noninstructional personnel;
  - b. The academic year duration for instructional personnel (teachers); or
  - c. Not more than two full academic years' duration for faculty at State technical colleges.

2. At his discretion, the agency head or his designee may count up to six months of continuous satisfactory service in the previous class or unclassified State title toward the employee's probationary period which would result in a reduction in the length of the employee's performance review period.
3. An employee who performs unsatisfactorily during the probationary period must be terminated before becoming a covered employee.

**D. Trial Period**

A covered employee who is promoted to a position in which he has not held permanent status in the class or unclassified State title must complete a six-month trial period. This period may be extended up to 90 calendar days upon written notification to the employee of the extension prior to the end of the six-month trial period.

**19-704.04 DEMOTION**

- A. Demotion is defined as the assignment of an employee by the appointing authority from one established position to a different established position:
  1. Having a lower State salary range; or
  2. For employees in positions without a State salary range, assignment of a lower rate of pay to the employee except when the employee's job duties also are decreased for nonpunitive reasons.

**B. Probationary or Trial Status**

Upon demotion, an employee will be in probationary or trial status; however, if a covered employee previously held permanent status in the class or unclassified State title to which demoted, the demotion shall be with permanent status in the class or unclassified State title and the employee is not in probationary or trial status.

**C. Probationary Period**

1. An employee in probationary status who is demoted must complete a probationary period of:
  - a. Twelve months' duration for noninstructional personnel;
  - b. The academic year duration for instructional personnel (teachers); or
  - c. Not more than two full academic years' duration for faculty at State technical colleges.
2. At his discretion, the agency head or his designee may count up to six months of continuous satisfactory service in the previous class or unclassified State title toward the employee's probationary period which would result in a reduction in the length of the employee's performance review period.
3. An employee who performs unsatisfactorily during the probationary period must be terminated before becoming a covered employee.

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### D. Trial Period

A covered employee who is demoted to a position in which he has not held permanent status in the class or unclassified State title must complete a six-month trial period. This period may be extended up to 90 calendar days upon written notification to the employee of the extension prior to the end of the six-month trial period.

## 19-704.05 REASSIGNMENT AND TRANSFER

- A. Reassignment is defined as the movement within an agency of an employee from one position to another position having the same State salary range, or the movement of a position within an agency which does not require reclassification.
- B. Transfer is defined as the movement to a different agency of an employee from one position to another position having the same State salary range, or the movement of a position from one agency to another agency which does not require reclassification.
- C. Probationary or Trial Status

Upon reassignment or transfer, an employee shall be in probationary or trial status; however, a covered employee with permanent status in the class or unclassified State title is not in probationary or trial status when the reassignment or transfer:

- 1. Does not change the employee's class or unclassified State title; or
- 2. Is to a class or unclassified State title in which the employee already holds permanent status in the class or unclassified State title.

### D. Probationary Period

- 1. An employee in probationary status who is reassigned or transferred must complete a probationary period of:
  - a. Twelve months' duration for noninstructional personnel;
  - b. The academic year duration for instructional personnel (teachers); or
  - c. Not more than two full academic years' duration for faculty at State technical colleges.
- 2. At his discretion, the agency head or his designee may count up to six months of continuous satisfactory service in the previous class or unclassified State title toward the employee's probationary period which would result in a reduction in the length of the employee's performance review period. If the reassignment or transfer is not to a new class or unclassified State title, the employee's probationary period shall not change.
- 3. An employee who performs unsatisfactorily during the probationary period must be terminated before becoming a covered employee.

### E. Trial Period

A covered employee who is reassigned or transferred to a position in which he has not held permanent status in the class or unclassified State title must complete a six-month trial period. This period may be

extended by the agency head up to 90 calendar days upon written notification to the employee of the extension prior to the end of the six- month trial period.

**19-704.06 RECLASSIFICATION**

For classified positions, reclassification is defined as the assignment of a position in one class to another class which is the result of a natural or an organizational change in duties or responsibilities of the position. Reclassifications can occur:

A. Upward - The position moves from one class to another class having a higher State salary range.

1. Probationary or Trial Status

Upon upward reclassification, an employee shall be in probationary or trial status; however, if a covered employee previously held permanent status in the class to which reclassified, the upward reclassification shall be with permanent status in the class and the employee is not in trial status.

2. Probationary Period

a. An employee in probationary status whose position is reclassified upward must complete a probationary period of:

- (1) Twelve months' duration for noninstructional personnel;
- (2) The academic year duration for instructional personnel (teachers); or
- (3) Not more than two full academic years' duration for faculty at State technical colleges.

b. At his discretion, the agency head or his designee may count up to six months of continuous satisfactory service in the previous class toward the employee's probationary period which would result in a reduction in the length of the employee's performance review period.

c. An employee who performs unsatisfactorily during the probationary period must be terminated before becoming a covered employee.

3. Trial Period

A covered employee who is reclassified upward to a position in which he has not held permanent status in the class must complete a six-month trial period. This period may be extended up to 90 calendar days upon written notification to the employee of the extension prior to the end of the six-month trial period.

B. Downward - The position moves from one class to another class having a lower State salary range.

1. Probationary or Trial Status

Upon downward reclassification, an employee will be in probationary or trial status; however, if a covered employee previously held permanent status in the class to which reclassified, the downward reclassification shall be with permanent status in the class and the employee is not in trial status.

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### 2. Probationary Period

- a. An employee in probationary status whose position is reclassified downward must complete a probationary period of:
  - (1) Twelve months' duration for noninstructional personnel;
  - (2) The academic year duration for instructional personnel (teachers); or
  - (3) Not more than two full academic years' duration for faculty at State technical colleges.
- b. At his discretion, the agency head or his designee may count up to six months of continuous satisfactory service in the previous class toward the employee's probationary period which would result in a reduction in the length of the employee's performance review period.
- c. An employee who performs unsatisfactorily during the probationary period must be terminated before becoming a covered employee.

### 3. Trial Period

A covered employee who is reclassified downward to a position in which he has not held permanent status in the class must complete a six-month trial period. This period may be extended up to 90 calendar days upon written notification to the employee of the extension prior to the end of the six-month trial period.

C. Lateral - The position moves from one class to another class having the same State salary range.

#### 1. Probationary or Trial Status

Upon lateral reclassification, an employee shall be in probationary or trial status; however, if a covered employee previously held permanent status in the class to which reclassified, the lateral reclassification shall be with permanent status in the class and the employee is not in trial status.

#### 2. Probationary Period

- a. An employee in probationary status whose position is reclassified laterally must complete a probationary period of:
  - (1) Twelve months' duration for noninstructional personnel;
  - (2) The academic year duration for instructional personnel (teachers); or
  - (3) Not more than two full academic years' duration for faculty at State technical colleges.
- b. At his discretion the agency head or his designee may count up to six months of continuous satisfactory service in the previous class toward the employee's probationary period which would result in a reduction in the length of the employee's performance review period.
- c. An employee who performs unsatisfactorily during the probationary period must be terminated before becoming a covered employee.

### 3. Trial Period

A covered employee who is reclassified laterally to a position in which he has not held permanent status in the class must complete a six-month trial period. This period may be extended up to 90 calendar days upon written notification to the employee of the extension prior to the end of the six-month trial period.

## 19-704.07 UNCLASSIFIED STATE TITLE CHANGES

An unclassified State title change is defined as the assignment of a position in one unclassified State title to another unclassified State title which is the result of a natural or an organizational change in duties or responsibilities of the position. An unclassified State title change can occur:

A. Upward - The position moves from one unclassified State title to another unclassified State title having a higher State salary range or for a position without a State salary range, the position moves from one unclassified State title to another unclassified State title with higher level job duties or responsibilities as defined by the agency.

### 1. Probationary or Trial Status

Upon upward unclassified State title change, an employee shall be in probationary or trial status; however, if a covered employee previously held permanent status in the unclassified State title to which moved, the upward move shall be with permanent status in the unclassified State title and the employee is not in trial status.

### 2. Probationary Period

a. An employee in probationary status whose position is moved upward must complete a probationary period of:

- (1) Twelve months' duration for noninstructional personnel;
- (2) The academic year duration for instructional personnel (teachers); or
- (3) Not more than two full academic years' duration for faculty at State technical colleges.

b. At his discretion, the agency head or his designee may count up to six months of continuous satisfactory service in the previous unclassified State title toward the probationary period which would result in a reduction in the length of the employee's performance review period.

c. An employee who performs unsatisfactorily during the probationary period must be terminated before becoming a covered employee.

### 3. Trial Period

A covered employee whose position is moved upward to an unclassified State title in which he has not held permanent status must complete a six-month trial period. This period may be extended up to 90 calendar days upon written notification to the employee of the extension prior to the end of the six-month trial period.

B. Downward - The position moves from one unclassified State title to another unclassified State title having a lower State salary range or for a position without a State salary range, the position moves

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from one unclassified State title to another unclassified State title with lower level job duties or responsibilities as defined by the agency.

### 1. Probationary or Trial Status

Upon downward unclassified State title change, an employee will be in probationary or trial status; however, if a covered employee previously held permanent status in the unclassified State title to which moved, the downward move shall be with permanent status in the unclassified State title and the employee is not in trial status.

### 2. Probationary Period

- a. An employee in probationary status whose position is moved downward must complete a probationary period of:
  - (1) Twelve months' duration for noninstructional personnel;
  - (2) The academic year duration for instructional personnel (teachers); or
  - (3) Not more than two full academic years' duration for faculty at State technical colleges.
- b. At his discretion, the agency head or his designee may count up to six months of continuous satisfactory service in the previous unclassified State title toward the probationary period which would result in a reduction in the length of the employee's performance review period.
- c. An employee who performs unsatisfactorily during the probationary period must be terminated before becoming a covered employee.

### 3. Trial Period

A covered employee whose position is moved downward to an unclassified State title in which he has not held permanent status must complete a six-month trial period. This period may be extended up to 90 calendar days upon written notification to the employee of the extension prior to the end of the six-month trial period.

- C. Lateral - The position moves from one unclassified State title to another unclassified State title having the same State salary range or an equivalent level of job duties or responsibilities as defined by the agency.

### 1. Probationary or Trial Status

Upon lateral unclassified State title change, an employee shall be in probationary or trial status; however, if a covered employee previously held permanent status in the unclassified State title to which moved, the lateral move shall be with permanent status in the unclassified State title and the employee is not in trial status.

### 2. Probationary Period

- a. An employee in probationary status whose position is moved laterally must complete a probationary period of:
  - (1) Twelve months' duration for noninstructional personnel;

- (2) The academic year duration for instructional personnel (teachers); or
  - (3) Not more than two full academic years' duration for faculty at State technical colleges.
  - b. At his discretion, the agency head or his designee may count up to six months of continuous satisfactory service in the previous unclassified State title toward the probationary period which would result in a reduction in the length of the employee's performance review period.
  - c. An employee who performs unsatisfactorily during the probationary period must be terminated before becoming a covered employee.
3. Trial Period

A covered employee whose position is moved laterally to an unclassified State title in which he has not held permanent must complete a six-month trial period. This period may be extended up to 90 calendar days upon written notification to the employee of the extension prior to the end of the six-month trial period.

**19-704.08 MOVEMENT BETWEEN CLASSIFIED SERVICE AND UNCLASSIFIED SERVICE**

A. Classified Service to Unclassified Service

1. Movement of the Employee

- a. When an employee moves from a classified position to an unclassified position with a State salary range, the employee's status will be governed by Regulations 19-704.03 through 19-704.05 concerning the promotion, demotion, reassignment, or transfer of an unclassified employee.
- b. When an employee moves from a classified position to an unclassified position without a State salary range, the agency shall determine whether the new position has a higher, lower, or equivalent level of job duties or responsibilities than the former position. Based on that determination, the movement will be a promotion, demotion, reassignment, or transfer, and the employee's status will be governed by Regulations 19-704.03 through 19-704.05.

2. Movement of the Position

- a. When the position an employee occupies moves from the classified service to the unclassified service, the employee's status will be governed by Regulation 19-704.07 concerning the movement of unclassified positions.
- b. When the position an employee occupies moves from classified service to become an unclassified position without a State salary range, the agency shall determine whether the new position has a higher, lower, or equivalent level of job duties or responsibilities than the former position. Based on that determination, the employee's status will be governed by Regulation 19-704.07 concerning the movement of unclassified positions.

B. Unclassified Service to Classified Service

1. Movement of the Employee

- a. When an employee moves from an unclassified position with a State salary range to a classified position, the employee's status will be governed by Regulations 19-704.03 through

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19-704.05 concerning the promotion, demotion, reassignment, or transfer of classified employees.

- b. When an employee moves from an unclassified position without a State salary range to a classified position, the agency shall determine whether the new position has a higher, lower, or equivalent level of job duties or responsibilities than the former position. Based on that determination, the movement will be a promotion, demotion, reassignment, or transfer, and the employee's status will be governed by Regulations 19-704.03 through 19-704.05.

### **2. Movement of the Position**

- a. When the position an employee occupies moves from the unclassified service to the classified service, the employee's status will be governed by Regulation 19-704.06 concerning the reclassification of positions.
- b. When the position an employee occupies changes from an unclassified position without a State salary range to become a classified position, the agency shall determine whether the new position has a higher, lower, or equivalent level of job duties or responsibilities than the former position. Based on that determination, the employee's status will be governed by Regulation 19-704.06 concerning the reclassification of positions.

## **19-705 CLASSIFIED EMPLOYEE PAY PLAN**

### **SCOPE AND PURPOSE**

This regulation governs the establishment, maintenance, and administration of the Pay Plan applicable to all positions in the classified service.

### **19-705.01 STATEMENTS OF POLICY**

- A. The Budget and Control Board designates the State Human Resources Director to administer all Budget and Control Board policies and procedures relating to the Pay Plan.
- B. The Office of Human Resources (OHR) shall establish and maintain a Pay Plan to consist of (1) the official classification listing, (2) the official pay bands, and (3) the regulations and procedures governing the administration of the Pay Plan.
- C. In an agency whose agency head is reviewed by the Agency Head Salary Commission, no employee may receive a salary in excess of 95% of the midpoint of the agency head's salary range or the agency head's actual salary, whichever is greater, except on approval of the Budget and Control Board. Higher education technical colleges, colleges, and universities shall be exempt from this requirement.
- D. The Office of Human Resources is authorized to delegate to agencies by written agreement pay programs that are described in this regulation. Agencies with a delegation agreement shall comply with all State and federal laws and regulations, Budget and Control Board policies and guidelines, and the provisions contained in the delegation agreement. The delegation agreement shall constitute a contractual relationship between OHR and the requesting agency and may be terminated or altered at the discretion of OHR.
- E. When an employee moves from an unclassified position to a classified position, the employee's pay will be governed by the classified pay plan.

- F. An agency requests for or implementation of an increase in salary shall be requested or implemented when sufficient funds are available. The State Human Resources Director may require submission of appropriate documentation attesting to the availability of funding.
- G. The South Carolina Constitution prohibits an agency from granting extra compensation, fee, or allowance to any public officer, agent, servant, or contractor after services rendered, or contract made, nor authorize payment or part payment of any claim under any contract not authorized by law.
- H. An agency shall maintain documentation appropriate for the administration of this regulation.
- I. Prior to implementation, agencies shall develop any written policies described in these regulations to govern the administration of salary increases and decreases.
- J. The State Human Resources Director shall have the authority to make exceptions to Regulation 19-705.

**19-705.02 ADMINISTRATION OF THE PAY PLAN**

- A. The Office of Human Resources periodically shall conduct studies for the purpose of making recommendations that will maintain a competitive Pay Plan.
- B. An employee shall be paid within the pay bands in accordance with the provisions of this regulation.
- C. An employee shall not be paid in excess of the maximum of the pay band for a class, unless such payment is authorized by this regulation.
- D. Any pay action which requires approval from OHR must receive such approval prior to an agency effecting the action.
- E. Prior to submission to OHR for approval, the agency human resources shall review all proposed pay changes to determine that they are in compliance with the provisions of this regulation.

**19-705.03 HIRING SALARIES**

- A. Hiring at the Minimum - An employee must be paid at least the minimum of the pay band for the class to which hired.
- B. Hiring Above the Minimum
  - 1. Exceptional Qualifications - If an individual is exceptionally qualified for the position, OHR may authorize a salary for the individual at a rate above the minimum of the pay band for the class based on written justification submitted by the agency.
  - 2. Special Hire Rate - Based on written justification submitted by the agency, the Office of Human Resources may approve a special hire rate when experience has shown that recruitment of qualified applicants for selected positions in a class has not been possible at the minimum of the pay band.

**19-705.04 SALARY INCREASES**

- A. Agencies shall develop written policies to govern the administration of salary increases for employees.

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- B. Legislative Increase - General and Merit Increases shall be provided to employees in accordance with the provisions of the annual Appropriation Act.
- C. In-Band Salary Increase - Written justification for awarding an in-band salary increase shall be maintained by the employing agency. An employee's salary may be increased within his current pay band for the following reasons:
1. Performance Increase - An agency may increase an employee's salary based upon performance in accordance with § 8-1-160 of the South Carolina Code of Laws. Such increase shall be determined by the agency. A performance increase shall not place an employee's salary above the maximum of the pay band.
  2. Additional Skills or Knowledge Increase - An in-band increase may be granted when an employee gains additional skills or knowledge directly related to the job. An employee's salary may be increased by up to 15% for the acquisition of additional skills or knowledge, provided such increase does not place the employee's salary above the maximum of the pay band. For an increase of more than 15%, the agency must submit written justification to OHR for approval.
  3. Additional Job Duties or Responsibilities Increase - An in-band increase may be granted when an employee is assigned additional job duties or broader responsibilities, either within his current position or as a reassignment to another position in the same pay band in the employing agency. An employee's salary may be increased by up to 15% for the recognition of the additional job duties or responsibilities, provided such increase does not place the employee's salary above the maximum of the pay band. For an increase of more than 15%, the agency must submit written justification to OHR for approval. Should the additional job duties or responsibilities be removed from the employee within six months of the date that the salary increase was awarded, the salary may be reduced by up to the amount of the additional job duties or responsibilities increase. (*For removal of additional job duties or responsibilities, refer to Regulation 19-705.05 B. 2.*)
  4. Transfer Increase - An in-band increase may be granted when an employee accepts a position within another agency which is in the same pay band as his current position. An employee's salary may be increased by up to 15% for the recognition of a transfer, provided such increase does not place the employee's salary above the maximum of the pay band.
  5. Retention Increase - An in-band increase may be granted when an employee has a bona fide job offer from another employer, either within or outside of State government, and an agency wishes to retain the services of this employee in his current position. An employee's salary may be increased by up to 15% for the purpose of retention, provided such increase does not place the employee's salary above the maximum of the pay band. For an increase of more than 15% for employees who have bona fide job offers outside of State government, the agency must submit written justification to OHR for approval. An employee shall receive no more than one retention increase in a one-year period.
- D. Salary Increases Resulting from Upward Band Changes - An employee's salary may be increased as a result of movement to a higher pay band for the following reasons:
1. Promotional Increase
    - a. Upon promotion, the employee must be paid at least the minimum of the pay band of the class to which promoted.
    - b. Upon promotion, an employee's salary may be increased by up to 15% of his salary prior to promotion, or to the midpoint of the new pay band, whichever is greater. For an increase of

more than 15% and above the midpoint of the pay band, the agency must submit written justification to OHR for approval. Such increase shall not place the employee's salary above the maximum of the new pay band.

2. **Reclassification Increase**
  - a. When an employee's position is reclassified to a class with a higher pay band, the employee's salary shall be increased to at least the minimum of the pay band of the class to which reclassified.
  - b. Upon reclassification, an employee's salary may be increased by up to 15% of the salary prior to reclassification, provided such increase does not place the employee's salary above the maximum of the new pay band. For an increase of more than 15%, the agency must submit written justification to OHR for approval.
3. **Reallocation Increase - When OHR reallocates a class to a higher pay band:**
  - a. An employee in that class shall receive a salary increase at least to the new minimum of the new pay band; or
  - b. An employee in that class may receive up to a 15% salary adjustment provided such increase does not place an employee's salary above the maximum of the new pay band.
- E. An employee is not eligible to receive a salary increase upon downward reclassification or demotion.
- F. **Return from Leave Without Pay -** An employee who has returned from an authorized leave of absence without pay shall be paid at the same rate being paid at the time leave was granted, except that the employee shall be granted any legislative increases authorized during the employee's leave of absence. In determining the amount of adjustment that the employee shall be granted, the same implementation instructions that applied to all employees in that class shall be followed.

**19-705.05 SALARY DECREASES**

- A. Agencies shall develop written policies to govern the administration of salary decreases for employees.
- B. **In-Band Salary Decreases -** Written justification for effecting any salary decrease shall be maintained by the employing agency. An employee's salary may be decreased within his current pay band for the following reasons:
  1. **Performance Decrease -** An agency may decrease an employee's salary based upon performance in accordance with § 8-1-160 of the South Carolina Code of Laws. Such decrease shall be determined by the agency. Performance decreases must not place an employee's salary below the minimum of the pay band. Performance decreases must be based on the results of an Employee Performance Management System (EPMS) evaluation.
  2. **Removal of Additional Job Duties or Responsibilities -** Should the additional job duties or responsibilities which justified an additional job duties or responsibilities increase be removed from an employee within six months of the date that the salary increase was awarded or prior to the end of the trial period, the salary may be reduced by up to the amount of additional job duties or responsibilities increase. Such decrease in salary is not grievable or appealable under the State Employee Grievance Procedure Act.

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### 3. Assignment of Lower Level Responsibilities

- a. Voluntary Reason - An employee who is voluntarily assigned lower level responsibilities or moved to a position in his current pay band with lower level responsibilities than his current position, may, at the discretion of the agency head or his designee, be paid at any rate within the pay band provided the rate is equal to or below the current salary and provided the employee signs a written statement indicating agreement to the salary decrease. The signed document should be maintained by the agency.
- b. Involuntary Reason - A covered employee who is involuntarily assigned lower level responsibilities or moved to a position in his current pay band with lower level responsibilities than his current position, shall not have his salary reduced for a period of one year from the date of the action unless an exception is approved by the Budget and Control Board or his designee. After the expiration of the one-year period, with the approval of the agency head, or his designee, the employee's salary may be reduced no more than 15% or to the midpoint of the pay band, whichever is lower. An employee exempt from the State Employee Grievance Procedure Act, who is involuntarily assigned lower level responsibilities, may have his salary reduced no more than 15% or to the midpoint of the pay band, whichever is lower, immediately following the assignment of lower level responsibilities.

If the employee's salary is allowed to remain above the maximum of the pay band, the employee shall not be eligible for pay increases unless:

- (1) Subsequent pay adjustments establish the maximum of the pay band above the employee's rate of pay; or
- (2) The employee is subsequently promoted or his position is reclassified and his current rate of pay is below the maximum for the pay band for the class to which promoted or reclassified.

C. Salary Decreases Resulting from Downward Band Changes - Written justification for effecting any salary decrease shall be maintained by the employing agency. An employee's salary may be decreased as a result of movement to a lower pay band for the following reasons:

#### 1. Demotion and Downward Reclassification Decreases

- a. Voluntary Reason - An employee who voluntarily has his position reclassified to a class with a lower pay band or is demoted to a position in a lower pay band, may, at the discretion of the agency head or his designee, be paid at a salary equal to or below the current salary. However, the rate must be within the lower pay band and the employee must sign a written statement indicating agreement to the salary decrease. The signed document should be maintained by the agency.
- b. Disciplinary or Performance Reason - An employee who, as the result of a disciplinary action or unsatisfactory rating on an EPMS evaluation, has his position reclassified to a class with a lower pay band or is demoted to a position in a lower pay band, may, at the discretion of the agency head, be paid at a rate equal to or below the current salary, but within the lower pay band.
- c. Involuntary or Non-Disciplinary Reason - When a covered employee is demoted due to involuntary or non-disciplinary reasons or when an occupied position is reclassified to a class in a lower pay band for these reasons, the employee's salary shall not be reduced for a period of one year from the date of the demotion or downward reclassification unless an exception is

approved by the Budget and Control Board. After the expiration of the one-year period, with the approval of the agency head or his designee, the employee's salary may be reduced no more than 15% or to the midpoint of the pay band, whichever is lower. An employee exempt from the State Employee Grievance Procedure Act, who is involuntarily demoted or downwardly reclassified may have his salary reduced no more than 15% or to the midpoint of the pay band, whichever is lower, immediately following the demotion or downward reclassification.

If the employee's salary is allowed to remain above the maximum of the lower pay band, the employee shall not be eligible for pay increases unless:

- (1) Subsequent pay adjustments establish the maximum of the pay band above the employee's rate of pay; or
  - (2) The employee is subsequently promoted or his position is reclassified and his current rate of pay is below the maximum for the pay band for the class to which promoted or reclassified.
- d. An employee who is promoted or his position is reclassified upward, and subsequently demoted or his position is reclassified downward prior to attaining permanent status in a class of a higher pay band, shall have a reduction in pay as follows:
- (1) When an employee is demoted or his position is reclassified to the previous class or to a class with the same pay band held prior to promotion or reclassification, or to a class with a lower pay band, the employee's salary will be reduced by the amount previously received upon promotion or upward reclassification provided the salary will not exceed the maximum of the pay band for the class to which demoted or downwardly reclassified.
  - (2) When an employee is demoted or his position is reclassified downward to a class having a higher pay band than the original position, the employee's salary will be reduced by the amount previously received upon promotion or reclassification and the employee's new salary will be established in accordance with Regulation 19-705.04.

## 2. Downward Band Reallocation

When a class is reallocated to a lower pay band, the pay of an employee shall not be changed as a result of this action for a period of one year from the date of the action unless an exception is approved by the Budget and Control Board. After the expiration of the one-year period, with the approval of the agency head, the employee's salary may be reduced no more than 15% or to the midpoint of the pay band, whichever is lower. If the employee's salary exceeds the maximum of the new pay band, the employee shall not be eligible for pay increases of any type unless:

- a. Subsequent pay adjustments establish the maximum of the pay band above the employee's rate of pay; or
- b. The employee is subsequently promoted or his position is reclassified, and his current rate of pay is below the maximum of the pay band for the class to which promoted or reclassified.

### 19-705.06 SPECIAL SALARY ADJUSTMENTS

The State Human Resources Director is authorized to approve pay actions outside the provisions of Regulations 19-705.04 and 19-705.05 if circumstances warrant such approval.

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### 19-705.07 COMPENSATION NOT INCLUDED IN BASE SALARY

- A. Temporary Salary Adjustment - The Office of Human Resources is authorized to approve a temporary salary adjustment for an employee in a full-time equivalent (FTE) position if circumstances warrant such approval. The temporary salary adjustment must be removed when the circumstances that warranted such an increase are no longer present.
- B. Shift Differential Pay - The Office of Human Resources may approve the additional payment of a shift differential for classifications of employees in the entire agency or any portion of the agency assigned to an evening, night, weekend, rotating, or split shift. To qualify the shift for approval, the majority of hours of the shift must be outside the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday. The employee's pay shall be adjusted by the amount approved, even if such amount increases the employee's salary above the maximum of the pay band for the class.
- C. On-Call Pay - On-call pay is pay by the employing agency for classifications of employees in the entire agency or any portion of the agency to remain available to return to work within a specified period of time. The Office of Human Resources must approve on-call pay for employees.
- D. Call Back Pay - Call back pay is pay by the employing agency for an employee to report to work either before or after normal duty hours to perform emergency services. Each agency shall determine which groups of employees shall be subject to call back. Nonexempt employees shall be compensated for hours worked as a result of a call back at their regular hourly rate plus any shift differential for which they might be eligible and such time shall be counted in computing any overtime that may be due. When an employee to be called back for emergency services which require less than two hours on the job, or when no work is available when he reports, the employee shall be compensated a minimum of two hours. An employee shall not receive call back pay if:
  - 1. The call back has been canceled and the employee received notice in advance not to report to work; or
  - 2. The employee refuses alternate work that is offered upon reporting to work.
- E. Special Assignment Pay - The Office of Human Resources may approve additional compensation to classifications of employees in the entire agency or any portion of the agency for periods of time when he is on special assignment if circumstances warrant such approval based on guidelines established by OHR.
- F. Market or Geographic Differential Pay - The Office of Human Resources may approve Market or Geographic Differential Pay for classifications of employees in the entire agency or any portion of the agency for periods of time when circumstances warrant such approval.
- G. Bonuses - The General Assembly has authorized various programs through which agencies may award bonuses to employees. Agencies shall comply with guidelines established by the Budget and Control Board in the administration of bonus programs.
- H. Longevity Pay - The Longevity Salary Increase Program was discontinued in 1986. Individuals awarded longevity increases prior to the discontinuance of the program will continue to receive such previously awarded increases until termination of employment with State government. To calculate a salary increase for an employee who is presently receiving longevity pay, an agency shall:
  - 1. Deduct the longevity increase from the total compensation;

2. Calculate the increase on the reduced salary in accordance with applicable provisions of Regulation 19-705.03; and
  3. Add the longevity increase to the new salary.
- I. Grant Salary Adjustment - The Office of Human Resources is authorized to approve a grant salary adjustment for an employee in an FTE position if circumstances warrant such approval. The grant salary adjustment must be removed when the circumstances that warranted such an increase are no longer present.

**19-705.08 EFFECTIVE DATES OF SALARY CHANGES**

- A. The effective date of all salary changes provided in this regulation shall be no earlier than the date the action is approved by the appropriate authority.
- B. Retroactivity

Agencies must comply with Article III, § 30 of the South Carolina Constitution regarding retroactivity.

- C. Concurrent Increases

1. When general increases and other salary increases are awarded on the same date, the general increase shall be applied prior to any other salary increases.
2. When performance pay increases under § 8-11-940 of the South Carolina Code of Laws and salary increases other than general increases are awarded on the same date, the performance pay increases shall be applied prior to any other salary increases.

- D. Budgetary Limitations

In the case of budgetary limitations, OHR may approve exceptions to those salary increases that require approval by OHR regarding the effective date of salary increases based on written justification provided by the agency. Agencies should document internally the need to make exceptions regarding the effective date of salary increases for those increases for which they have approval authority.

**19-706 ESTABLISHMENT OF UNCLASSIFIED POSITIONS AND THE UNCLASSIFIED EMPLOYEE PAY PLAN**

**SCOPE AND PURPOSE**

This regulation governs the establishment, maintenance, and administration of the Unclassified Pay Plan applicable to all unclassified positions, except athletics coaches and unclassified employees in the athletics department of post secondary educational institutions as defined in § 59-107-10 of the South Carolina Code of Laws except the technical education colleges.

**19-706.01 CATEGORIES OF UNCLASSIFIED POSITIONS**

- A. An unclassified position is a full-time equivalent (FTE) position that has been assigned to an unclassified State title and falls under one of the following categories: (1) agency head covered by the Agency Head Salary Commission, (2) Executive Compensation System, (3) academic personnel, or (4) unclassified other.

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- B. The compensation of agency heads covered by the Agency Head Salary Commission is addressed in Regulation 19-706.04 A.
- C. The compensation of employees in positions covered by the Executive Compensation System is governed by Regulation 19-706.04 B.
- D. Academic personnel are defined by § 8-11-220 of the South Carolina Code of Laws as “presidents, provosts, vice presidents, deans, teaching and research staffs, and others of academic rank employed by the State educational institutions of higher learning, or medical institutions of education and research.” The compensation of employees in positions in the category of academic personnel is governed by Regulation 19-706.04 C. Presidents who are covered by the Agency Head Salary Commission are not subject to the regulations pertaining to academic personnel.
- E. Positions in the category of Unclassified Other include:
  - 1. Agency heads not covered by the Agency Head Salary Commission;
  - 2. Designated staff of the Governor’s office;
  - 3. Teachers;
  - 4. Such other personnel employed by the institutions of higher learning and/or medical institutions of education and research as are recommended by the respective governing bodies and approved by the Budget and Control Board;
  - 5. Other positions as the General Assembly may elect to exempt.

The compensation of employees in positions in the category of Unclassified Other is governed by Regulation 19-706.04 D.

### 19-706.02 STATEMENTS OF POLICY

- A. The Budget and Control Board designates the State Human Resources Director to administer all Budget and Control Board policies and procedures relating to the unclassified State titles and compensation of employees in unclassified positions.
- B. The Office of Human Resources shall develop and maintain a position numbering system that will identify each unclassified position.
- C. In an agency whose agency head is reviewed by the Agency Head Salary Commission, no employee may receive a salary in excess of 95% of the midpoint of the agency head’s salary range or the agency head’s actual salary, whichever is greater, except on approval of the Budget and Control Board. Higher education technical colleges, colleges, and universities shall be exempt from this requirement.
- D. All pay actions which require approval from OHR must receive such approval prior to an agency effecting the actions.
- E. The South Carolina Constitution prohibits an agency from granting extra compensation, fee, or allowance to any public officer, agent, servant, or contractor after services rendered, or contract made, nor authorize payment or part payment of any claim under any contract not authorized by law.
- F. All employees in unclassified positions with State salary ranges shall be paid within their respective range and the provisions of Regulation 19-706.

- G. An employee who has returned from an authorized leave of absence without pay shall be paid at the same rate being paid at the time leave was granted, except that the employee may be granted any legislative increases made during the employee's absence. In determining the amount of adjustment that the employee may be granted, the same implementation instructions that applied to all other employees in the same unclassified category shall be followed.
- H. A position may move between the classified and unclassified systems provided the agency does not exceed its respective number of classified and unclassified authorized FTEs. (*Refer to Regulation 19-704.08.*)
- I. When an employee moves from a classified position to an unclassified position, the employee's pay will be governed by the unclassified pay plan.
- J. The Office of Human Resources is authorized to delegate to agencies by written agreement the establishment of unclassified positions within authorized limits and changes to the unclassified State title. Agencies with a delegation agreement shall comply with State and federal laws and regulations, Budget and Control Board policies and guidelines, and the provisions contained in delegation agreement. The delegation agreement shall constitute a contractual relationship between OHR and the requesting agency and may be terminated or altered at the discretion of OHR.
- K. An agency's requests for or implementation of an increase in salary shall be requested or implemented when sufficient funds are available. The State Human Resources Director may require submission of appropriate documentation attesting to the availability of funding.
- L. An agency shall maintain documentation appropriate for administration of these regulations.
- M. Prior to implementation, agencies shall develop any written policies described in these regulations to govern the administration of salary increases and decreases.
- N. The State Human Resources Director shall have the authority to make exceptions to Regulation 19-706.

**19-706.03 ADMINISTRATION OF THE PAY PLAN**

- A. The Office of Human Resources will coordinate with agencies to develop, implement, and maintain unclassified State titles which appropriately identify and distinguish between unclassified positions.
- B. An unclassified position should be authorized by the General Assembly and established by OHR. When establishing an unclassified position, OHR assigns a position number, unclassified State title and code, slot number, and State salary range, if applicable.
- C. The Office of Human Resources has the authority to designate a classified position as unclassified for purposes of initially placing positions in the Executive Compensation System.
- D. The Office of Human Resources may, as appropriate, conduct studies of unclassified positions with State salary ranges for the purpose of making recommendations that will maintain a competitive pay plan.
- E. The State Human Resources Director is authorized to approve pay actions outside the provisions of Regulation 19-706 for employees other than agency heads if circumstances warrant such approval.

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### 19-706.04 HIRING SALARIES, SALARY INCREASES, AND SALARY DECREASES FOR EMPLOYEES IN UNCLASSIFIED POSITIONS

#### A. Agency Heads Covered by the Agency Head Salary Commission

The compensation of agency heads covered by the Agency Head Salary Commission is governed by the Commission and the Budget and Control Board.

#### B. Executive Compensation System

##### 1. Hiring Salaries for Employees in the Executive Compensation System

- a. Hiring at the Minimum - An employee must be paid at least the minimum of the State salary range for the position.
- b. Hiring Above the Minimum - An employee may be hired at a salary up to the midpoint of the State salary range for the position if circumstances warrant such approval. The Budget and Control Board may authorize payment of a salary above the midpoint of the State salary range for the position based on written justification submitted by the agency.
- c. Entry into the Executive Compensation System - Upon movement into the new position, the employee is eligible for up to a 15% salary increase or up to the midpoint of the State salary range for the new position, whichever is greater. Such increase shall not place the employee's salary above the maximum of the new State salary range. The Budget and Control Board may authorize exceptions based on written justification submitted by the agency.

##### 2. Salary Increases for Employees in the Executive Compensation System

- a. Written justification for awarding salary increases shall be maintained by the agency.
- b. In-Range Increases
  - (1) Legislative Increase - An annual pay increase shall be provided to the Executive Compensation System employees in accordance with the provisions of the annual Appropriation Act.
  - (2) Performance Increase - An agency may increase an employee's salary based upon performance in accordance with § 8-1-160 of the South Carolina Code of Laws. Such an increase shall be determined by the agency. A performance increase shall not place an employee's salary above the maximum of the State salary range.
- c. Salary Increases Upon Promotion
  - (1) Upon promotion, an employee's salary must be at least the minimum of the State salary range for the position to which promoted.
  - (2) Upon promotion, an employee's salary may be increased up to 15% or up to the midpoint of the State salary range for the position to which promoted, whichever is greater. Such increase shall not place the employee's salary above the maximum of the new State salary range. The Budget and Control Board may authorize exceptions based on written justification submitted by the agency.

d. Salary Increases Upon Upward Reevaluation

- (1) When an occupied position is reevaluated and is assigned a higher State salary range, the employee's salary must be at least the minimum of the new State salary range.
- (2) Upon an upward reevaluation, an employee's salary may be increased up to 15% or up to the midpoint of the State salary range, whichever is greater. Such increase shall not place the employee's salary above the maximum of the new State salary range.

3. Salary Decreases for Employees in the Executive Compensation System

a. Written justification for effecting any salary decrease shall be maintained by the agency.

- b. Performance Decrease - An agency may decrease an employee's salary based upon performance in accordance with § 8-1-160 of the South Carolina Code of Laws. Performance decreases may not place an employee's salary below the minimum of the State salary range. Performance decreases must be based on the results of an Employee Performance Management System (EPMS) evaluation, and the salary decrease shall be determined by the agency.

c. Salary Decreases Upon Demotion or Downward Reevaluation

- (1) Voluntary Reason - An employee, who is voluntarily demoted to a position with a lower State salary range or who voluntarily has his position reevaluated to a lower State salary range, may at the discretion of the agency head or his designee, be paid at any salary equal to or below the current salary. However, the salary must be within the lower State salary range, and the employee must sign a written statement indicating agreement to the salary decrease. The signed document with justification should be maintained by the agency.
- (2) Disciplinary or Performance Reason - An employee who, as the result of a disciplinary action or an unsatisfactory rating on an EPMS evaluation, has his position reevaluated to a lower State salary range or is demoted to a position with a lower State salary range, may, at the discretion of the agency head, be paid at any salary within the lower State salary range provided the salary is equal to or below the current salary, but must be within the lower State salary range.
- (4) Involuntary or Non-Disciplinary Reason - When a covered employee is demoted due to involuntary or non-disciplinary reasons or when an occupied position is reevaluated to a lower State salary range for these reasons, the employee's salary shall not be reduced for a period of one year from the date of the demotion or downward reevaluation unless an exception is approved by the Budget and Control Board. After the expiration of the one-year period, with the approval of the agency head or his designee, the employee's salary may be reduced no more than 15% or to the midpoint of the State salary range, whichever is lower. An employee exempt from the State Employee Grievance Procedure Act, who is involuntarily demoted or whose position is downwardly reevaluated may have his salary reduced no more than 15% or to the midpoint of the pay State salary range, whichever is lower, immediately following the demotion or downward reevaluation.

If the employee's salary is allowed to remain above the maximum of the lower State salary range for the position, the employee shall not be eligible for pay increases unless:

- (a) Subsequent pay adjustments establish the maximum of the State salary range above the employee's rate of pay; or

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- (b) The employee is subsequently promoted or his position is reevaluated and his current salary is below the maximum of the State salary range for the position.

### C. Academic Personnel

#### 1. Hiring Salaries for Employees in the Category of Academic Personnel

Agencies may determine hiring salaries for unclassified employees in the category of academic personnel. Agencies should consider comparable positions and market data for the occupational area when setting initial hiring salaries for employees in this category.

#### 2. Salary Increases for Employees in the Category of Academic Personnel

- a. Agencies shall develop written policies to govern the administration of salary increases for academic personnel in unclassified positions. Written justification for awarding salary increases shall be maintained by the agency.
- b. A legislative increase shall be provided to academic personnel in accordance with the provisions of the annual Appropriation Act.
- c. Agencies may award a salary increase of up to 15% for any of the reasons listed below. For an increase of more than 15%, the agency must submit written justification to OHR for approval.
  - (1) The acquisition of additional skills or knowledge directly related to the job;
  - (2) The assignment of additional job duties or responsibilities;
  - (3) The retention of an employee who has a bona fide job offer from an employer, either within or outside of State government. For an increase of more than 15%, the employee must have a bona fide job offer outside of State government and the request must be submitted to OHR for approval. An employee shall receive no more than one retention increase in a one-year period;
  - (4) The need to address internal equity or equity with the external market;
  - (5) Promotion to a higher level position - The agency shall determine whether the new position has a higher level of job duties or responsibilities than the former position; or
  - (6) Assignment of higher level job duties or responsibilities as defined by the agency which results in a change in unclassified State title.
- d. As provided in an agency's faculty promotion policy, the agency may develop policies for rank promotions for faculty. Such increases shall be determined by the agency.
- e. A performance increase may be awarded to an employee in accordance with § 8-1-160 of the South Carolina Code of Laws. Such increases shall be determined by the agency.

#### 3. Demotions and Salary Decreases for Employees in the Category of Academic Personnel

Agencies shall develop written policies to govern the administration of salary decreases for academic personnel. Written justification for effecting any salary decrease shall be maintained by the agency.

- a. Performance or Disciplinary Decrease - An agency may decrease an employee's salary based upon performance or disciplinary reasons. Performance decreases should be based on the results of a performance evaluation. Any salary decrease shall be determined by the agency.
- b. Removal of Additional Job Duties or Responsibilities - Should the additional job duties or responsibilities which justified an additional job duties or responsibilities increase be removed from an employee within six months of the date that the salary increase was awarded, the salary may be reduced by up to the amount of additional job duties or responsibilities increase. For academic personnel covered by the State Employee Grievance Procedure Act, this decrease in salary is not grievable or appealable if the removal of the duties and subsequent salary decrease occur within six months of the date the salary increase was awarded. (Refer to Regulation 19-718.)
- c. Demotion and Assignment of Lower Level Responsibilities
  - (1) Voluntary Reason - An employee, who is voluntarily demoted or is voluntarily assigned to lower level responsibilities within his current position, may be paid at a rate which is agreed upon by the employee and the agency provided the employee signs a written statement indicating agreement to the salary decrease. The signed document should be maintained by the agency.
  - (2) Involuntary Reason
    - (a) Academic Personnel Covered by the State Employee Grievance Procedure Act
      - i. Disciplinary or Performance Reason - An employee who, as the result of a disciplinary action or unsatisfactory rating on a performance evaluation, is demoted or assigned lower level responsibilities, shall not have his salary reduced by more than 15%. For a decrease of more than 15%, the agency must submit written justification to OHR for approval.
      - ii. An employee, who is involuntarily demoted or assigned lower level responsibilities, shall not have his salary reduced for a period of one year from the date of the action unless an exception is approved by the Budget and Control Board. After the expiration of the one year period, with the approval of the agency head, the employee's salary may not be reduced by more than 15%. For a decrease of more than 15%, the agency must submit written justification to OHR for approval.
    - (b) Academic Personnel Exempt from the State Employee Grievance Procedure Act
 

An employee, who is involuntarily demoted or assigned lower level responsibilities, shall not have his salary reduced by more than 15%. For a decrease of more than 15%, the agency must submit written justification to OHR for approval.

**4. Administrative Salary Adjustment**

Institutions of higher learning may award administrative salary adjustments to unclassified academic personnel during periods of time when they are assigned additional administrative responsibilities related to their role as Dean, Assistant Dean, Associate Dean, or Department

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Chairman. Administrative salary adjustments are not considered part of the employee's base salary. An agency may award an administrative salary adjustment of up to 15%. For an increase of more than 15% or for an increase related to administrative responsibilities other than those listed above, the agency must submit written justification to OHR for approval.

5. Summer Employment for Academic Personnel of State Institutions of Higher Learning
  - a. Summer employment is not considered dual employment, which covers additional compensation earned during an employee's base period of employment. Therefore, summer employment may occur over any specified period of time between May and September of a calendar year.
  - b. All institutions of higher learning should develop policies and procedures for governing academic personnel who are teaching summer sessions outside of their base period of employment. Institutions of higher learning should consider comparable positions and market data for the occupational area when determining compensation for summer teaching. The rate of pay should be comparable to the preceding academic year and may not exceed 40% of the employee's annualized salary. Written justification for any exceptions should be submitted to OHR for approval.
  - c. Academic personnel shall be compensated at the same rate of pay as the immediately preceding academic year for sponsored research or other activities performed during the summer months (between academic years) which are not related to a regular summer session.
  - d. Institutions of higher learning shall maintain records of all agreements pertaining to summer employment.

### D. Unclassified Other

1. Unclassified Other (Agency Heads Not Covered By the Agency Head Salary Commission)

Agency heads not covered by the Agency Head Salary Commission shall have their salary established in accordance with relevant legislation.

2. Unclassified Other (Teachers)

Agencies shall pay all teachers the appropriate salary provided by the salary schedule of the school district in which the agency is located. Each year, agencies with certified teachers should submit their salary schedule for teachers to OHR for information.

3. Unclassified Other (Non-Teachers)

- a. Hiring Salaries for Employees in the Category of Unclassified Other (Non-Teachers)

Agencies may determine hiring salaries for employees in the category of unclassified other (non-teachers). Agencies should consider comparable positions and market data for the occupational area when setting hiring salaries for employees in these unclassified positions.

- b. Salary Increases for Employees in the Category of Unclassified Other (Non-Teachers)

(1) Written justification for awarding salary increases shall be maintained by the agency.

- (2) A legislative increase shall be provided to employees in the category of unclassified other (non-teachers) in accordance with the provisions of the annual Appropriation Act.
- (3) Agencies may award a salary increase of up to 15% for any of the reasons listed below. For an increase of more than 15%, the agency must submit written justification to OHR for approval.
  - (a) The acquisition of additional skills or knowledge directly related to the job;
  - (b) The assignment of additional job duties or responsibilities;
  - (c) The retention of an employee who has a bona fide job offer from an employer, either within or outside of State government. For an increase of more than 15%, the employee must have a bona fide job offer outside of State government and the request must be submitted to OHR for approval. An employee shall receive no more than one retention increase in a one-year period;
  - (d) The need to address internal equity or equity with the external market;
  - (e) Promotion to a higher level position. The agency shall determine whether the new position has a higher level of job duties or responsibilities than the former position; or
  - (f) Assignment of higher level job duties or responsibilities which results in a change in unclassified State title.
- (4) A performance increase may be awarded to an employee in accordance with § 8-1-160 of the South Carolina Code of Laws. Such increases shall be determined by the agency.
- c. Demotions and Salary Decreases for Employees in the Category of Unclassified Other (Non-Teachers)

Agencies shall develop written policies to govern the administration of salary decreases for employees in the category of unclassified other (non-teachers). Written justification for effecting any salary decrease shall be maintained by the agency.

- (1) Performance Decrease - An agency may decrease an employee's salary based upon performance in accordance with § 8-1-160 of the South Carolina Code of Laws. Performance decreases must be based on the results of an Employee Performance Management System (EPMS) evaluation, and the salary decrease shall be determined by the agency.
- (2) Removal of Additional Job Duties or Responsibilities - Should the additional job duties or responsibilities which justified an additional job duties or responsibilities increase be removed from an employee within six months of the date that the salary increase was awarded or prior to the end of the trial period, the salary may be reduced by up to the amount of additional job duties or responsibilities increase. Such decrease in salary is not grievable or appealable under the State Employee Grievance Procedure Act.
- (3) Demotion or Assignment of Lower Level Responsibilities
  - (a) Voluntary Reason - An employee, who is demoted or is voluntarily assigned to lower level responsibilities within his current position, may be paid at a rate which is agreed upon by the employee and the agency provided the employee signs a written statement

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indicating agreement to the salary decrease. The signed document should be maintained by the agency.

### (b) Involuntary Reason

- i. Disciplinary or Performance Reason - An employee who, as the result of a disciplinary action or unsatisfactory rating on an EPMS evaluation, is demoted or assigned lower level responsibilities, shall not have his salary reduced by more than 15%. For a decrease of more than 15%, the agency must submit written justification to OHR for approval.
- ii. A covered employee, who is involuntarily demoted or assigned lower level responsibilities, shall not have his salary reduced for a period of one year from the date of the action unless an exception is approved by the Budget and Control Board. After the expiration of the one-year period, with the approval of the agency head or his designee, the employee's salary may not be reduced by more than 15%. An employee exempt from the State Employee Grievance Procedure Act, who is demoted or involuntarily assigned lower level responsibilities, shall not have his salary reduced by more than 15% immediately following the demotion or assignment of lower level responsibilities.

For a decrease of more than 15%, the agency must submit written justification to OHR for approval.

## 19-706.05 COMPENSATION NOT INCLUDED IN BASE SALARY

- A. Temporary Salary Adjustment - The Office of Human Resources is authorized to approve a temporary salary adjustment for an employee in an FTE position if circumstances warrant such approval. The temporary salary adjustment must be removed when the circumstances that warranted such an increase are no longer present.
- B. Bonuses - The General Assembly has authorized various programs through which agencies may award bonuses to employees. Agencies shall comply with guidelines established by the Budget and Control Board in the administration of bonus programs.
- C. Grant Salary Adjustment - The Office of Human Resources is authorized to approve a grant salary adjustment for an employee in an FTE position if circumstances warrant such approval. The grant salary adjustment must be removed when the circumstances that warranted such an increase are no longer present.

## 19-706.06 EFFECTIVE DATES OF SALARY CHANGES

- A. The effective date of all salary changes provided in Regulations 19-706.04 and 19-706.05 shall be no earlier than the date the action is approved by the appropriate authority.

### B. Retroactivity

Agencies must comply with constitutional provisions regarding retroactivity.

### C. Concurrent Increases

When general increases and other salary increases are awarded on the same date, the general increase shall be applied prior to any other salary increases.

#### D. Budgetary Limitations

In the case of budgetary limitations, OHR may approve exceptions to those salary increases that require approval by OHR regarding the effective date of salary increases based on written justification provided by the agency. Agencies should document internally the need to make exceptions regarding the effective date of salary increases for those increases for which they have approval authority.

### 19-707 HOURS OF WORK AND OVERTIME

#### SCOPE AND PURPOSE

This regulation governs the hours of work and overtime policies for employees.

#### 19-707.01 HOURS OF WORK

- A. No agency shall have less than a 37.5-hour workweek. Generally, the core hours that an agency shall remain open for business are 8:30 a.m. to 5:00 p.m., Monday through Friday.
- B. The minimum full-time workweek for employees of agencies is 37.5 hours. The agency may vary an employee's work schedule through the use of alternative scheduling strategies including telecommuting to meet the needs and service delivery requirements of the agency.
- C. The agency may require an employee to work additional hours when responsibilities of the agency cannot be accomplished in the normal work hours observed by the agency.
- D. Each agency is required to keep an accurate record of all employee's scheduled hours of work and leave taken. Leave shall be recorded in the appropriate categories and shown as either leave with or without pay. The agency head has the ultimate responsibility for the accuracy and proper maintenance of hours of work and leave records.

#### 19-707.02 OVERTIME - COMPENSATORY TIME

- A. The Office of Human Resources (OHR) develops an overtime model policy to assist an agency in its policy development. The Office of Human Resources must review and approve each agency's overtime policy.
- B. Each agency shall develop an overtime policy and establish procedures that will ensure compliance with federal and state laws, including the Fair Labor Standards Act (FLSA).
- C. By interpretation of the United States Department of Labor, the State is considered to be one employer for the purposes of applying FLSA.
- D. For overtime purposes the two categories of employees are: (a) nonexempt (overtime provisions of FLSA do apply) and (b) exempt (overtime provisions of FLSA do not apply). The exempt or nonexempt status of any employee must be determined by the agency based on the provisions of FLSA. It is the responsibility of the agency head or his designee to determine whether an exemption is applicable to a particular employee.
- E. Workweek is seven consecutive 24-hour periods, i.e., 168 consecutive hours designated by the employing agency.

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Exception - In the case of law enforcement personnel or fire protection and emergency medical personnel, these categories of employees have work schedules up to 28 consecutive 24-hour periods, i.e., 672 consecutive hours designated by the employing agency.

- F. Hours worked are all hours that an employee is permitted to work for the employing agency. Hours worked include time during which an employee is necessarily required to be on the employing agency's premises, on duty, or at a prescribed work place. Hours worked do not include leave with or without pay or holidays when an employee does not actually work.
- G. Overtime is actual hours worked in excess of 40 hours in a given seven consecutive day period as determined by the employing agency. The Fair Labor Standards Act contains special provisions for determining when overtime is earned by employees in certain job categories. These categories include:
  - 1. Fire protection and emergency medical personnel;
  - 2. Law enforcement (including security personnel in correctional institutions);
  - 3. Hospitals or institutions primarily engaged in the care of the sick, the aged, the mentally ill, or the disabled that reside on the premises; and
  - 4. Employees who are compensated for overtime using the fluctuating workweek method of payment for overtime as defined by FLSA which must be approved by OHR prior to implementation.
- H. Generally a nonexempt employee should not incur overtime; however, overtime may be permitted when authorized by the agency.
- I. Compensatory time is an acceptable alternative to overtime compensation for employees.
  - 1. Upon separation from employment, nonexempt employees shall be paid for unused compensatory time, and exempt employees shall not be paid for unused compensatory time.
  - 2. Upon separation from employment, nonexempt employees shall be paid for unused compensatory time at a rate of compensation not less than the higher of:
    - a. The average regular rate received by such employee during the last three years of the employee's employment; or
    - b. The final regular rate received by such employee.
- J. Nonexempt Employee Procedures
  - 1. Payment for Overtime

Nonexempt employees shall either be paid or given compensatory time for hours worked in excess of 40 hours in a given work period of seven consecutive days. For hours worked in excess of 40 in an established workweek of seven consecutive days, payment for overtime or the accrual of compensatory time shall be at the rate of time and one-half the employee's regular rate, computed on the basis of a 40-hour workweek. (*Refer to Exceptions in Regulation 19-707.02 G.*)
  - 2. Compensatory Time
    - a. A nonexempt employee engaged in public safety work, emergency response work, or seasonal work may not accumulate more than 480 hours of compensatory time. Any employee who has

accumulated 480 hours of compensatory time shall be paid overtime for additional hours of work.

- b. A nonexempt employee engaged in work other than public safety work, emergency response work, or seasonal work, may not accumulate more than 240 hours of compensatory time. Any employee who has accumulated 240 hours of compensatory time shall be paid overtime for additional hours of work.

3. Recordkeeping for Nonexempt Employees

Each agency must maintain the following information for nonexempt employees.

- a. Name;
- b. Home address;
- c. Date of birth if under 19 years of age;
- d. Gender and occupation;
- e. Employee workweek, including time of day and day of week on which the employee's workweek begins;
- f. Regular hourly rate of pay for any week when overtime is worked and overtime pay is due;
- g. Hours worked each workday and total hours worked each week;
- h. Total daily or weekly straight-time wages for all hours worked;
- i. Total overtime excess compensation for the workweek;
- j. Total additions or deductions from wages each pay period;
- k. Total wages paid each pay period;
- l. Date of payment and pay period covered;
- m. The number of hours of compensatory time earned each workweek, or other applicable work period, by each employee at the rate of 1 1/2 hours for each overtime hour worked;
- n. The number of hours of such compensatory time used each workweek or other applicable work period by each employee; and
- o. The number of hours of compensatory time compensated in cash, the total amount paid, and the date of such payment.

K. Exempt Employee Procedures

1. No Payment for Overtime

Exempt employees shall not be paid overtime

2. Compensatory Time

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If allowed by an agency's overtime policy, exempt employees may receive compensatory time for hours worked in excess of 40 in the workweek. If granted, compensatory time must not be at a rate greater than one hour of compensatory time for each hour worked in excess of 40 in the workweek.

### L. Employment at More Than One State Agency

When a nonexempt employee is employed at more than one State agency, each employing agency shall calculate separately the hours worked by the employee. By interpretation of the United States Department of Labor, the State is considered to be one employer for the purpose of applying FLSA; therefore, the agencies where the individual is employed should jointly determine whether such a nonexempt employee is owed any overtime compensation during a workweek. (*For information on dual employment, refer to Regulation 19-713.*)

### M. Volunteers

Time spent as a volunteer is not included in hours worked. An employee may volunteer services for an agency or a political subdivision of the State, if a) the individual does not receive compensation, paid expenses, benefits, or a nominal fee for services for which the individual volunteered, and b) such services are not the same type of services which the individual is employed to perform for such public agency. An employee of a public agency which is a state, political subdivision of a state, or an interstate governmental agency may volunteer services for any other state, political subdivision, or interstate governmental agency including a state, political subdivision or interstate governmental agency with which the employing agency has a mutual aid agreement.

## 19-708 HOLIDAYS

### SCOPE AND PURPOSE

This regulation governs the observance of holidays by employees in full-time equivalent (FTE) positions.

#### 19-708.01 ELIGIBILITY

All employees in FTE positions shall be allowed to observe with pay those holidays listed in Regulation 19-708.02.

#### 19-708.02 LEGAL HOLIDAYS

##### State Holidays

New Year's Day	January 1
Martin Luther King, Jr. Day	Third Monday in January
George Washington's Birthday/President's Day	Third Monday in February
Confederate Memorial Day	May 10
National Memorial Day	Last Monday in May
Independence Day	July 4

Labor Day	First Monday in September
Veterans Day	November 11
Thanksgiving Day	Fourth Thursday in November
Day after Thanksgiving	Friday Following Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25
Day after Christmas	December 26

**19-708.03 HOLIDAY OBSERVANCE PROCEDURE**

- A. Holidays are to be taken on the prescribed day unless the agency requires the employee to work. The agency shall give employees who must work on holidays prior notice if possible.
- B. When a holiday falls on a Saturday or Sunday, it shall be observed on the preceding Friday or the following Monday, respectively, by employees working a Monday through Friday schedule. Employees shall observe the holiday on the designated day or receive holiday compensatory time.
- C. Employees in FTE positions who do not work a normal Monday through Friday workweek shall receive no more nor any fewer number of holidays than those employees who work the normal Monday through Friday workweek.
- D. The length of an employee's holiday is computed based on the number of hours in the employee's average workday. To determine the number of hours in a holiday, divide the total number of hours an employee is regularly scheduled to work during a week by five (regardless of the number of days the employee actually reports to work).
- E. When a holiday falls during a period of leave with pay, that day will be counted as a holiday, not as a day of leave.
- F. Employees who are on leave without pay the day before a holiday shall not be paid or receive holiday compensatory time for holidays falling during this period of leave without pay.
- G. The holiday schedules of public colleges and universities, including technical colleges, shall not be in violation of this regulation so long as the number of holidays provided in this regulation are not exceeded.

**19-708.04 HOLIDAY COMPENSATORY TIME**

- A. An employee, except an employee of an agency following an academic schedule, who is required by the agency to work on a holiday shall be given holiday compensatory time at the convenience of the agency within 90 days of such holiday.
- B. An employee of an agency which follows an academic schedule who is required by the agency to work on a holiday shall be given holiday compensatory time at the convenience of the agency within one year from the date of the holiday.
- C. An employee who must work a portion of the holiday due to a shift that begins on one day and ends on

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another shall be granted holiday compensatory time equal to all hours worked on the holiday.

- D. All nonexempt employees who are not allowed to take holiday compensatory time earned for working on a holiday within the 90-day period, or the one-year period in the case of employees who follow academic schedules, shall be compensated for the holiday by the employing agency at the straight hourly pay rate of the employee. Exempt employees shall not be paid for unused holiday compensatory time. An agency head or designee may extend the 90-day period for an additional 90 days because of limited staffing.
- E. All nonexempt employees shall be compensated for all holiday compensatory time upon separation from employment. Exempt employees shall not be paid for unused holiday compensatory time upon separation of employment.
- F. **Holiday Compensatory Time Records**

Records shall be maintained for all employees who receive holiday compensatory time. Information contained in the record must include:

- 1. Compensatory time earned and used in terms of hours; and
- 2. The number of hours per week the employee is normally scheduled to work and the employee's average workday.

## **19-709 ANNUAL LEAVE**

### **SCOPE AND PURPOSE**

This regulation governs the annual leave policies for employees in full-time equivalent (FTE) positions.

#### **19-709.01 ELIGIBILITY**

- A. Annual leave shall be earned by and granted to:
  - 1. Full-time employees in FTE positions; and
  - 2. Part-time employees in FTE positions who are:
    - a. Scheduled to work at least one-half the workweek of the agency on a 12 month basis; or
    - b. Scheduled to work the equivalent of one-half of the workweek during the full school or academic year of nine months or more.
- B. This regulation shall not apply to teaching personnel and officials of academic rank at institutions of higher learning.

#### **19-709.02 ANNUAL LEAVE EARNINGS**

- A. **Computation**
  - 1. Employees who are in pay status one-half or more but not all of the workdays of the month shall earn annual leave for the full month. If they are in pay status for less than one-half the workdays, they shall earn no annual leave.

2. Employees shall earn annual leave while on annual leave, sick leave, or other authorized leave with pay. Employees shall not earn annual leave while on leave without pay.
3. Employees' annual leave earnings are computed based on the number of hours in the employee's workday.
4. Employees' annual leave earnings are based on the employee's leave accrual date. The leave accrual date reflects:
  - a. All State service in an FTE position, including part-time service, adjusted to reflect periods when there was a break in service;
  - b. All service as a certified employee in a permanent position of a school district of this State; and
  - c. At the discretion of the agency head or his designee, all service in any temporary capacity counted towards the employee's probationary period. (*Refer to Regulation 19-704.02 D. 2.*)

B. Rate of Earnings

1. Five-Day Workweek Schedule of 37.5 or 40 Hours Per Week

- a. To determine the number of hours in a workday, divide the total number of hours an employee is regularly scheduled to work during a week by five (regardless of the number of days the employee actually reports to work).
- b. Service of Ten Years or Less

Employees on a five-day workweek schedule with service time of less than ten years shall earn annual leave at the rate of 1¼ workdays per month of service in each calendar year. (See Chart #1 and Chart #2 below.) In addition, all service as a certified employee in a permanent position of a school district of this State must be used to calculate the leave accrual date.

c. Service of More Than Ten Years

Employees on a five-day per workweek schedule with State service time of more than ten years shall earn a bonus of 1¼ workdays of annual leave for each year of service over ten years. (See Chart #1 and Chart #2 below.) In addition, all service as a certified employee in a permanent position of a school district of this State must be used to calculate the leave accrual date.

Chart #1  
Five Days, 37.5 Hours Per Workweek Schedule  
(may be rounded to the nearest two decimal places)

<u>Years of Service</u>	<u>Days Per Year</u>	Earning Rate <u>Hours Per Month</u>
1-10	15.00	9.375
11	16.25	10.156
12	17.50	10.937
13	18.75	11.718
14	20.00	12.500

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15	21.25	13.281
16	22.50	14.062
17	23.75	14.843
18	25.00	15.624
19	26.25	16.406
20	27.50	17.187
21	28.75	17.968
22 & over	30.00	18.750

Chart #2  
Five Days, 40 Hours Per Workweek Schedule  
(may be rounded to the nearest two decimal places)

<u>Years of Service</u>	<u>Earning Rate Days Per Year</u>	<u>Hours Per Month</u>
1-10	15.00	10.000
11	16.25	10.833
12	17.50	11.666
13	18.75	12.500
14	20.00	13.333
15	21.25	14.167
16	22.50	15.000
17	23.75	15.833
18	25.00	16.667
19	26.25	17.500
20	27.50	18.333
21	28.75	19.167
22 & over	30.00	20.000

### 2. Schedules Other Than a Five-Day Workweek of 37.5 or 40 Hours Per Week

All employees earn the number of days per year based on their years of service. However, the earning rate in hours per month varies according to the length of the workday. If the workday differs from eight hours, divide the number of hours in the workday by eight, then multiply this ratio by the earnings rate in the last column of Chart #2 above. Examples of such schedules could include:

- a. Law enforcement employees who are regularly scheduled to work 43 hours per week. Forty-three hours divided by five equals a workday of 8.6 hours;
- b. Fire protection employees who are regularly scheduled to work 53 hours per week. Fifty-three hours divided by five equals a workday of 10.6 hours;
- c. Part-time employees who are regularly scheduled to work 20 hours per week. Twenty hours divided by five equals a workday of four hours; or
- d. Full-time employees who are regularly scheduled to work 39 hours per week. Thirty-nine hours divided by five equals a workday of 7.8 hours.

C. Maximum Accrual and Carryover

1. Employees shall be permitted to carryover from one calendar year to the next any unused annual leave up to a total accumulation of 45 workdays; EXCEPT THAT, employees of an agency which provided for maximum accumulation in excess of 45 workdays as of June 2, 1972, shall not forfeit the excess, but shall retain excess leave which shall be the maximum amount the employee may carryover into future years. If the employee subsequently reduces the amount of such leave carried over, the reduced amount, if in excess of 45 workdays, shall become the employee's maximum carryover into future years. If the employee further reduces the amount of such leave carried over to 45 workdays or less, 45 days shall become the maximum amount of unused annual leave the employee may thereafter carryover. During the calendar year, an employee may earn annual leave in excess of the 45 workdays; however, the employee may only carryover 45 days to the next calendar year.
  
2. An employee who changes from being full-time to part-time or from part-time to full-time, without a break in service, shall retain the annual leave hours previously earned. If this change results in the employee having a maximum accumulation in excess of 45 workdays as of the effective date of the change, the employee shall not forfeit the excess. The employee shall retain this excess leave which shall be the maximum amount the employee may carryover into future years. If the employee subsequently reduces the amount of such leave carried over, the reduced amount, if in excess of 45 workdays, shall become the employee's maximum carryover into future years. If the employee further reduces the amount of such leave carried over to 45 workdays or less, 45 days shall become the maximum amount of unused annual leave the employee may thereafter carryover. During the calendar year, an employee may earn annual leave in excess of the 45 workdays; however, the employee may only carryover 45 days to the next calendar year.

**19-709.03 USING AND SCHEDULING ANNUAL LEAVE**

- A. Leave taken under this regulation may qualify as Family and Medical Leave Act (FMLA) leave and, if so, will run concurrently.

B. Scheduling Leave

1. To the degree possible, an employee's request for a specific period of annual leave shall be approved. Agencies may consider workloads and similar factors when reviewing the requests.
  
2. Agency approval is required for the specific periods the employee shall be on annual leave, to include beginning and ending dates and computation of total hours.

C. Maximum Days Used Per Year

1. The maximum number of earned days of annual leave that may be used in any one calendar year shall not exceed 30 workdays.
  
2. Exception
  - a. For Family and Medical Leave Act qualifying reasons, an agency may allow an employee who has used all eligible sick leave and 30 days of annual leave to use any remaining annual leave for:
    - (1) Emergencies or serious health conditions of the employee;

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(2) Emergencies or serious health conditions of the employee's immediate family. (Immediate family is defined in Regulation 19-710.04 B. 6.)

- b. For emergency or extreme hardship conditions as referenced in § 8-11-670 of the South Carolina Code of Laws, the agency head or designee may allow an employee, who has used all accumulated sick leave and thirty days of annual leave any remaining annual leave which he has accumulated.
- c. An employee may request review by the State Human Resources Director the denial of the use of annual leave as provided in this regulation.

### D. Increments for Use of Annual Leave

Use of annual leave shall be calculated at either the actual time or in quarter hour increments.

### E. Holiday During Leave

When a holiday is observed by the agency while an employee is using annual leave, the day shall be considered a holiday, not a day of annual leave for the employee.

## 19-709.04 TRANSFER FROM ONE STATE AGENCY TO ANOTHER

- A. An employee who transfers without a break in service from one agency to another shall transfer earned annual leave.
- B. When a full-time employee transfers to an agency that has a different workday, his annual leave at the transferring agency shall be converted to equivalent days of annual leave at the receiving agency.
- C. When an employee transfers from a position in which he earns both sick and annual leave to a teaching position of academic rank at a State supported institution of higher learning, the employee shall be paid for earned annual leave according to Regulation 19-709.05.
- D. When the employee with a maximum carryover in excess of 45 workdays transfers from one agency to another, the employee shall retain the higher maximum carryover at the receiving agency. If the employee subsequently reduces the amount of such leave carried over, the reduced amount, if in excess 45 workdays, shall become the employee's maximum carryover into future years. If the employee further reduces the amount of such leave carried over to 45 workdays or less, 45 days shall become the maximum amount of unused annual leave the employee may thereafter carryover. During the calendar year, the employee may earn annual leave in excess of the 45 workdays; however, the employee may only carryover 45 days to the next calendar year.

## 19-709.05 PAYMENT UPON SEPARATION FROM EMPLOYMENT

Upon separation from State employment, a lump sum payment will be made for unused annual leave, not to exceed 45 days, unless a higher maximum is authorized under Regulation 19-709.02 C., and without deducting any earned leave taken during the calendar year in which the employee separates. Upon the death of an employee while in active service, the estate of the deceased employee shall be entitled to the lump sum payment not to exceed 45 days except as included in § 8-11-610 of the South Carolina Code of Laws.

Exception - Refer to Regulation 19-719.01 B. 2. (Exceptions).

**19-709.06 RECORDS**

- A. The agency shall maintain all annual leave records for each employee eligible for annual leave. Such records must include at least the following:
  - 1. The annual leave accrual rate for each employee;
  - 2. The number of annual leave hours earned and used during the current calendar year;
  - 3. The number of annual leave hours carried forward from the previous calendar year, but not exceeding the maximum accrual authorized;
  - 4. The number of hours in the employee's workweek and workday; and
  - 5. The number of hours paid out upon separation.
- B. Annual leave records shall be reviewed by or reported to the employee no less than once per calendar year and be supported by the individual leave requests.

**19-710 SICK LEAVE**

**SCOPE AND PURPOSE**

This regulation governs the sick leave policies for employees in full-time equivalent (FTE) positions.

**19-710.01 ELIGIBILITY**

Sick leave shall be earned by and granted to:

- A. Full-time employees in FTE positions; and
- B. Part-time employees in FTE positions who are:
  - 1. Scheduled to work at least one-half the workweek of the agency on a 12 month basis; or
  - 2. Scheduled to work the equivalent of one-half of the workweek during the full school or academic year of nine months or more.

**19-710.02 SICK LEAVE EARNINGS**

- A. Computation
  - 1. Employees who are in pay status for at least one-half or more of the workdays of the month shall earn sick leave for the full month. If they are in pay status for less than one-half the workdays, they shall earn no sick leave.
  - 2. Employees shall earn sick leave while on sick leave, annual leave, or other authorized leave with pay. Employees shall not earn sick leave while on leave without pay.
  - 3. Employees' sick leave earnings are computed based on the number of hours in the employee's workday.

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### B. Rate of Earnings

#### 1. Five-Day Workweek Schedule of 37.5 or 40 Hours Per Week

All employees in FTE positions shall earn sick leave beginning with the date of employment at the rate of 1¼ workdays per month of service or 15 days per year. To determine the number of hours in a workday, divide the total number of hours an employee is regularly scheduled to work during a week by five (regardless of the number of days the employee actually reported to work).

#### 2. Schedules Other Than a Five-Day Workweek of 37.5 or 40 Hours Per Week

To calculate the sick leave earnings for employees working schedules other than a five-day workweek of 37.5 or 40 hours per week (including part-time, variable, and nonstandard work schedules), the agency must determine what a workday is for each such employee. To determine the number of hours in a workday, divide the total number of hours an employee is regularly scheduled to work during a week by five (regardless of the number of days the employee actually reported to work). Examples of such schedules could include:

- a. Law enforcement employees who are regularly scheduled to work 43 hours per week. Forty-three hours divided by five equals a workday of 8.6 hours;
- b. Fire protection employees who are regularly scheduled to work 53 hours per week. Fifty-three hours divided by five equals a workday of 10.6 hours;
- c. Part-time employees who are regularly scheduled to work 20 hours per week. Twenty hours divided by five equals a workday of four hours; or
- d. Full-time employees who are regularly scheduled to work 39 hours per week. Thirty-nine hours divided by five equals a workday of 7.8 hours.

### C. Maximum Accrual and Carryover

Full-time and part-time employees in FTE positions shall be permitted to earn up to 195 workdays. Full-time and part-time employees in FTE positions shall carryover from one calendar year to the next any unused earned sick leave up to a total maximum carryover of 180 workdays.

#### Exceptions

1. Any employee, who prior to January 1, 1969, earned and carried over unused sick leave in excess of 180 workdays pursuant to the agency's policy existing at the time, shall not forfeit the excess, but shall retain such excess leave which shall become the maximum amount the employee may carryover into future years. If the employee subsequently reduces the amount of sick leave carried over to 180 workdays or less, 180 workdays shall become the maximum amount of unused sick leave the employee may thereafter carryover; or
2. An employee who changes from being full-time to part-time or from part-time to full-time, without a break in service, shall retain the sick leave hours previously earned. If this change results in the employee having a maximum accumulation in excess of 180 workdays, as of the effective date of the change, the employee shall not forfeit the excess. The employee shall retain this excess leave which shall be the maximum amount the employee may carryover into future years. If the employee subsequently reduces the amount of such leave carried over, the reduced amount, if in excess of 180 workdays, shall become the employee's maximum carryover into future years. If the employee further reduces the amount of such leave carried over to 180 workdays or less, 180

workdays shall become the maximum amount of unused sick leave the employee may thereafter carryover. During the calendar year, an employee may earn sick leave in excess of 180 workdays; however, an employee may only carry over 180 days into the next year.

**19-710.03 ADDITIONAL SICK LEAVE MAY BE GRANTED**

- A. An agency may advance up to 15 workdays of additional sick leave to an employee in extenuating circumstances.
- B. The agency may advance this leave only upon documentation from a health care provider that the employee is expected to return to work within that period of time.
- C. Upon return to work, the employee will have all earned sick leave applied to the leave deficit at the rate of 1¼ days per month (or if part-time, the monthly earning rate) until the deficit has been eliminated.
- D. If an employee separates from employment before satisfying the leave deficit and returns to state employment, the leave deficit will need to be satisfied upon reemployment.

**19-710.04 USING AND SCHEDULING SICK LEAVE**

- A. Leave taken under this regulation may qualify as Family and Medical Leave Act (FMLA) leave and, if so, will run concurrently.
- B. Reasons an employee shall be allowed to use sick leave are as follows:
  - 1. Personal illness or injury that incapacitates the employee to perform duties of the position;
  - 2. Exposure to a contagious disease such that presence on duty could endanger the health of fellow employees;
  - 3. Appointment for medical or dental examination or treatment when such appointment cannot reasonably be scheduled during nonwork hours;  
[Note: if possible, examination appointments must be approved in advance by the agency designee.]
  - 4. Sickness during pregnancy or other temporary disabilities;  
[Note: If possible, the date on which sick leave for disability is to begin shall be at the request of the employee based on the determination and advice of a health care practitioner.]
  - 5. Treatment for alcoholism;  
[Note: In accordance with § 8-11-110 of the South Carolina Code of Laws which recognizes alcoholism as a treatable illness, sick leave will be granted for the purpose of participating in public and private treatment and rehabilitation programs which have been approved by the South Carolina Department of Mental Health.]
  - 6. Caring for ill members of immediate family;  
[Note: Employees earning sick leave as provided in Regulation 19-710 may not use more than ten days of sick leave annually to care for ill members of their immediate families. For purposes of this regulation, the employee’s “immediate family” means the employee’s spouse and children and the following relations to the employee or the spouse of the employee: mother, father, brother, sister, grandparent, legal guardian, and grandchildren.]

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### 7. Caring for an adoptive child.

[Note: An adoptive parent who is employed by this State, its departments, agencies, or institutions may use up to six weeks of his earned sick leave to take time off for purposes of caring for the child after placement. The agency shall not penalize an employee for requesting or obtaining time off according to this regulation. The leave authorized by this regulation may be requested by the employee only if the employee is the person who is primarily responsible for furnishing the care and nurture of the child.]

### C. Verification

The use of sick leave shall be subject to verification. The agency designee may, before approving the use of sick leave, require the certificate of a health care practitioner verifying the need for sick leave and giving the inclusive dates.

### D. Increments for Use of Sick Leave

Use of sick leave shall be calculated at either the actual time or in quarter hour increments.

### E. Use of Sick Leave Before Going on Leave Without Pay

In qualifying sick leave situations, the employee shall use all sick leave before going on leave without pay unless the agency head or his designee grants an exception at the employee's request.

### F. Holiday During Sick Leave

When a holiday is observed by the agency while an employee uses sick leave, the day shall be considered a holiday, not a day of sick leave for the employee.

## 19-710.05 TRANSFER

### A. Between State Agencies

An employee who transfers without a break in service from one State agency to another shall transfer his earned sick leave. Any transferred sick leave shall be adjusted to the scheduled workweek of the receiving agency. In the case of an employee transferring from an agency under whose system the employee has, prior to January 1, 1969, a maximum accumulation in excess of that currently authorized by the receiving agency, the total sick leave balance shall be transferred. If the employee subsequently reduces the amount of sick leave carried over to 180 workdays or less, 180 workdays shall become the maximum amount of unused sick leave the employee may thereafter carryover.

### B. Between A State Agency and School District

An employee of a State agency transferring to a school district of the State or a school district employee transferring to a State agency is permitted to transfer to and retain at his new employer all sick leave he earned at his former employer regardless of his employment status at the new employer.

## 19-710.06 SEPARATION FROM EMPLOYMENT

Upon separation from employment, an employee shall forfeit all earned sick leave.

### A. Retirement - An employee shall receive service credit for no more than 90 days of his unused sick leave at no cost to the employee. The leave must be credited at a rate where 20 days of unused sick

leave equals one month of service. This additional service credit may not be used to qualify for retirement.

- B. Reduction in Force Rights - An employee who is reinstated within one year of the date of separation shall have his sick leave restored. (*Refer to Regulation 19-719.04 B. 4. d.*)
- C. Up to Six Month Exception to Break in Service - An employee who has received prior approval for an extension to the 15-day break in service shall have his sick leave restored if transferred or appointed to another FTE position within the approved time period. (*Refer to Regulation 19-719.01 B. 2. (Exception).*)

**19-710.07 RECORDS**

- A. The agency shall maintain all sick leave records for each employee eligible for sick leave. Such records must include at least the following:
  - 1. The number of sick leave hours earned and used during the current calendar year;
  - 2. The number of sick leave hours carried forward from the previous calendar year, but not exceeding the maximum accrual authorized; and
  - 3. The number of hours in the employee's workweek and workday.
- B. Sick leave records shall be reviewed by or reported to the employee no less than once per calendar year and be supported by individual leave requests.

**19-711 LEAVE TRANSFER PROGRAM**

**SCOPE AND PURPOSE**

This regulation governs the manner in which employees may voluntarily donate sick or annual leave into a leave transfer pool for use by other employees, who have been approved as leave recipients under personal emergency circumstances.

**19-711.01 AGENCY RESPONSIBILITY**

- A. Each agency shall establish two separate leave transfer pool accounts, a sick leave transfer pool and an annual leave transfer pool.
- B. Records and Forms

Each agency shall maintain the following records:

- 1. Donation Request Form - The Donation Request Form shall include:
  - a. The employee's name;
  - b. The employing agency;
  - c. The employee's State title;
  - d. The employee's hourly rate of pay;

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- e. The number of days/hours of the leave donor's earned sick or annual leave;
  - f. The number of days/hours of sick or annual leave the employee wishes to donate to the appropriate leave transfer pool;
  - g. The date of the donation; and
  - h. The leave donor's signature.
2. Recipient Request Form - The Recipient Request Form shall include:
    - a. The employee's name;
    - b. The employing agency;
    - c. The employee's State title;
    - d. The employee's hourly rate of pay; and
    - e. A brief description of the nature, severity, and anticipated duration of the medical, family, or other hardship situation affecting the employee.
  3. Leave Restoration Form - The Leave Restoration Form shall include:
    - a. The name of the leave recipient;
    - b. The type of leave transferred (sick or annual);
    - c. The amount of transferred leave used;
    - d. The date the leave recipient's personal emergency or employment terminates; and
    - e. The amount of transferred leave (sick or annual) being restored to the respective pool.

### 19-711.02 ANNUAL REPORTING

Each agency having any donation or approved requests for leave transfer in a calendar year shall submit the following information to the Office of Human Resources (OHR):

- A. Sick Leave - Total hours and cost of:
  1. Sick leave donated;
  2. Sick leave used by recipient(s); and
  3. Sick leave restored, if any.
- B. Annual Leave - Total hours and cost of:
  1. Annual leave donated;
  2. Annual leave used by recipient(s); and

- 3. Annual leave restored, if any.
- C. Any additional information requested by OHR needed to evaluate the desirability, feasibility, and cost of the leave transfer program.

**19-711.03 ELIGIBILITY TO DONATE**

- A. An employee donating sick or annual leave to either the sick or annual leave transfer pool must do so prior to the end of the calendar year.
- B. An employee may donate no more than one-half of the sick or annual leave he earns within a calendar year to the appropriate pool leave account for that calendar year.
- C. An employee’s leave, once transferred to a pool account, must not be restored or returned to the leave donor.
- D. Sick Leave - An employee with more than 15 days in his sick leave account may transfer sick leave to the agency’s sick leave pool if he retains a minimum of 15 days in his own sick leave account. An employee with less than 15 days in his sick leave account may not transfer any sick leave to the agency’s sick leave pool.
- E. Annual Leave - An employee may voluntarily request by completing the employing agency’s Donation Request Form, that a specified number of hours of his earned annual leave be transferred from his annual leave account to his employing agency’s annual leave transfer pool.

**19-711.04 REQUEST FOR LEAVE**

An employee with a personal emergency may request sick or annual leave from the appropriate pool account by completing the employing agency’s Recipient Request Form. While there is no limit to the number of separate requests that an employee may submit to the employing agency, each separate request shall be limited to no more than 30 workdays.

**19-711.05 LEAVE APPROVAL**

Under guidelines established by the Budget and Control Board, the agency head of the employing agency may, upon receiving a completed request, review all necessary information and approve recipients from within the agency to participate in the leave transfer program. Unless the personal emergency involves a medical condition affecting the leave recipients, the employing agency may consider the likely impact on morale and efficiency within the agency in approving a leave recipient to use transferred leave.

**19-711.06 NO ADMINISTRATIVE OR JUDICIAL APPEAL**

The decisions of the agency head of the employing agency are final, and there is no administrative or judicial appeal of the decisions.

**19-711.07 USE OF SICK OR ANNUAL LEAVE**

- A. Leave taken under this regulation may qualify for the Family Medical Leave Act (FMLA) and, if so, will run concurrently.
- B. Under guidelines established by the Budget and Control Board, the employing agency may transfer all or any portion of the sick leave in the pool account to the sick leave account of the leave recipient, and all or any portion of the annual leave in the pool account to the annual leave account of the leave

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recipient.

- C. Upon approval of a request, an employee may use sick or annual leave from the appropriate pool account in the same manner and for the same purposes as if the employee had earned the leave in the manner provided by law.
- D. Sick or annual leave earned by the leave recipient must be used before using any leave from a leave transfer pool.
- E. Sick or annual leave transferred under this program may be substituted retroactively for periods of leave without pay or used to liquidate indebtedness for advanced sick leave.

### **19-711.08 WHEN PERSONAL EMERGENCY TERMINATES**

- A. The personal emergency affecting a leave recipient terminates when either the employing agency determines that the personal emergency no longer exists or either the leave recipient separates from employment.
- B. The employing agency shall monitor continuously the status of the personal emergency affecting the leave recipient and establish procedures to ensure that the leave recipient is not permitted to receive or use transferred sick or annual leave from a pool account after the personal emergency terminates.
- C. When the personal emergency terminates, the employing agency may not grant further requests for transfer of leave to the leave recipient's leave account. When the personal emergency affecting a leave recipient terminates, any transferred sick or annual leave remaining must be restored to the appropriate pool account by completing a Leave Restoration Form.

### **19-711.09 SEPARATION FROM EMPLOYMENT**

Transferred sick or annual leave from a pool account remaining when the leave recipient separates from employment must be restored to the appropriate pool account by the completion of a Leave Restoration Form. Upon separation from employment, transferred leave from a pool account must not be transferred to another employee, included in a lump sum payment for earned leave, or included in the leave recipient's total service for retirement computation purposes.

## **19-712 OTHER LEAVE PROGRAMS**

### **SCOPE AND PURPOSE**

This regulation governs the leave programs, other than annual and sick leave and holidays.

### **19-712.01 OTHER LEAVE TYPES**

Leave taken under this regulation may qualify as Family and Medical Leave Act (FMLA) leave and, if so, will run concurrently.

#### **A. Administrative Leave**

State employees in full-time equivalent (FTE) positions who are physically attacked while in the performance of official duties and suffer bodily harm as a result of the attack must be placed on administrative leave with pay by their employers rather than sick leave. The period of administrative leave for each incident may not exceed 180 calendar days. Denial of the use of administrative leave by the

agency will be grounds for review by the Office of Human Resources (OHR) upon request of the employee. Administrative review by OHR will be final.

B. Adoption Leave (*Refer to Regulation 19-710.04 B. 7.*)

C. American Red Cross Certified Disaster Service Leave

An employee who is a certified disaster service volunteer for the American Red Cross may use up to 10 days of paid leave in a calendar year to participate in specialized disaster relief services with the approval of the agency designee.

D. Blood Drive and Donation Leave

1. Agencies may periodically arrange volunteer blood drives for their employees. The blood drives may be held at the times and places as may be determined by the agency head. The agency's employees are permitted to participate in the blood drive during their work hours without using sick and annual leave.
2. An employee desiring to donate blood at a time, other than an agency arranged volunteer blood drive, must be excused from work by his agency during the employee's regular work hours for the purpose of making the donation without prejudice to the employee and no leave or makeup time may be required. Any employee desiring to donate blood as provided in § 8-11-175 of the South Carolina Code of Laws shall notify his agency of the scheduled donation and the amount of time needed for the donation as far in advance as may be practicable. The agency may deny the employee's request for time to donate if the absence of the employee would create an extraordinary burden on the agency. In considering the employee's request, the agency shall take into consideration such factors as the necessity and type of blood donation, and any other factor the agency considers appropriate. The agency may, as condition of approving the request, require the employee to provide documentation of the donation.

E. Bone Marrow Donor Leave

An employee who works an average of 20 hours or more a week and who seeks to undergo a medical procedure to donate bone marrow may be granted bone marrow donor leave with pay. The total amount of paid leave may not exceed 40 work hours unless a longer length of time is approved by the agency head. Such leave may require verification by a health care practitioner of the purpose and length of each request. If a medical determination finds that the employee does not qualify as a bone marrow donor, the paid leave of absence granted to the employee before that medical determination is not forfeited.

F. Court Leave

1. Jury Duty (With Pay)

- a. An employee, who is summoned as a member of a jury panel, shall be granted court leave with pay. Any jury fees and travel payment shall be retained by the employee. This court leave with pay shall not apply to agencies whose employees are exempt from jury duty by law.
- b. An employee, who is excused from jury duty and was not required to be at court the number of hours equal to the employee's workday, is required to return to the job according to arrangements between the employee and the agency designee. The employee must be on authorized leave for any time the employee is excused from jury duty and does not return to work.

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- c. An employee who is summoned to jury duty will be required to work on any given day only the number of hours that equal the employee's work schedule, minus the hours required to be at court.

### 2. Subpoenaed As a Witness (With Pay)

An employee, who is subpoenaed as a witness and who will not receive any personal gain from the outcome of the litigation, shall be entitled to court leave with pay for those hours required for the subpoena and may retain any witness fee and travel expenses.

### 3. Exceptions

- a. An employee engaged in personal litigation is not eligible for court leave with pay, but may be granted annual leave or leave without pay with appropriate authorization.
- b. When an employee is subpoenaed to represent an agency as a witness or defendant, his appearance is considered a part of the employee's job assignment. The employee shall be reimbursed for any meals, lodging, and travel expenses that may be incurred according to State Travel Guidelines as provided in the annual Appropriation Act and Budget and Control Board Regulations.
- c. When an employee attends, in an official capacity, a mediation or mediation-arbitration conference his attendance is considered a part of the employee's job assignment.
- d. When an employee appears as a witness or in any other official capacity in a hearing before the State Employee Grievance Committee, his appearance is considered a part of the employee's job assignment.

## G. Death in Immediate Family Leave

1. An employee, upon request, shall be granted up to three consecutive workdays of leave with pay on the death of any member of the employee's immediate family. Immediate family is defined as the spouse, great-grandparents, grandparents, parents, legal guardians, brothers, spouse of brothers, sisters, spouse of sisters, children, spouse of children, grandchildren, great-grandchildren of either the employee or the spouse.
2. An employee requesting leave for a death in the immediate family shall submit a statement to the appropriate authority stating the name of the deceased and the relationship to the deceased.

## H. Educational Leave

An employee is encouraged to schedule classes during off-duty hours, whenever possible. When a class cannot be scheduled during off-duty hours, the agency may adjust the employee's work schedule, if doing so will not interfere with normal efficient operations of the agency. When a class cannot be scheduled during off-duty hours and the agency cannot feasibly adjust the work schedule of the employee, the employee may be allowed to take annual leave or may be granted leave without pay in order to attend classes.

## I. Extended Disability Leave

Under the Americans with Disabilities Act (ADA), certain extended illnesses may be protected as disabilities and may require reasonable accommodation.

1. For any extended period of certified disability due to illness, injury, or maternity, an employee may request leave not to exceed 180 calendar days.
2. The agency shall require, prior to approval of an extended disability, certification by the health care practitioner to include: (1) the date on which the serious health condition commenced, (2) the probable duration of the condition, and (3) appropriate medical facts within the knowledge of the health care practitioner regarding the condition. Dates set forth in the health care practitioner's certificate may be amended. The agency may require additional documentation from the health care practitioner issuing the certificate or may secure additional medical opinions from other health care practitioners.
3. An agency may not deny an employee's request for the 180-day disability leave for bona fide illness or disability if the employee is in an FTE position.
4. Should the employee return within the approved 180-day period, the agency shall reinstate the employee to the same position or one of a comparable pay band for which the employee is qualified.
5. If the employee is unable to return within the 180-day period, the agency must separate the employee from State service.
6. In extenuating circumstances, two extensions are available:
  - a. The agency head may extend the 180-day period of leave to a total of 365 days provided the health care practitioner certifies the employee's return within this time period; and
  - b. The agency head may extend the disability leave beyond the 365 days without a break in service provided the health care practitioner certifies the employee's return to work within the time frame of the requested extension.

**J. Family and Medical Leave Guidelines**

For more detailed information, consult the Family and Medical Leave Act (FMLA) and relevant federal regulations. State government is considered a single employer for the purpose of determining FMLA leave.

1. Eligibility and Reasons for FMLA Leave
  - a. Family Medical Leave Act leave shall be granted to any employee who has worked for the State at least 12 months, and who has worked at least 1,250 hours (defined as FLSA compensable hours of work) during the 12-month period prior to the request for FMLA leave, including "on-call" hours. The required total of 12 months of employment need not be consecutive. An agency can go back 7 years prior to the date of the need for leave to determine if the employee worked a total of 12 months with state government. An agency has the ability to go beyond 7 years if an employee left state employment due to National Guard or Reserve Military obligations or a written agreement reflecting an employer's intention to rehire after a break.

In order to determine if an exempt employee meets the 1,250 hours of service, work records may be kept.

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- b. An eligible employee shall be granted up to a total of 12 weeks of FMLA leave, in each calendar year, for any of the following reasons:
- (1) For the birth of a son or daughter and to care for that child;
  - (2) For placement of a son or daughter for adoption or foster care with the employee;
  - (3) For caring of the employee's spouse, son, daughter, or parent with a serious health condition;
  - (4) For a serious health condition that makes the employee unable to perform the functions of the employee's job; and
  - (5) For qualifying exigencies arising out of the fact that the employee's spouse, son, daughter, or parent is on active duty or called to active duty status as a member for the National Guard or Reserves in support of a contingency operation. Qualifying exigencies can include: (1) short notice deployment; (2) military events and related activities; (3) childcare and school activities; (4) financial and legal arrangements; (5) counseling; (6) rest and recuperation; (7) post-deployment activities; and (8) additional activities not encompassed in other categories but agreed by the agency and the employee.
- c. Under the military caregiver leave provisions, an eligible employee who is a spouse, son, daughter, parent, or next of kin of a current member of the Armed Forces, including a member of the National Guard or Reserves, with a serious injury or illness may be able to take up to a total of 26 workweeks in a single 12-month period to care for the service member.

Note: Reasons (1) and (2) for leave expires 12 months after the date of the birth or placement.

### 2. Scheduling FMLA Leave

An eligible employee requesting FMLA leave must give 30 days advance notice to the employing agency of the need to take FMLA leave when the need for leave is foreseeable. When the need for leave is not foreseeable, such notice must be given as soon as practical. The use of FMLA leave shall be subject to verification. The agency may require documentation or certification from a health care provider supporting the need for FMLA leave for a serious health condition. Agencies may also require documentation for certification of serious health condition of a spouse, son, or daughter, a qualifying exigency or to confirm familial relationships.

### 3. Use of FMLA Leave

The agency is responsible for declaring leave as FMLA leave based on information provided by the employee.

- a. When the agency designates leave as FMLA leave, it must notify the employee. No leave may be designated as FMLA leave after the leave has ended, except as provided for under the FMLA.
- b. Use of FMLA leave shall be calculated by either the actual time or in quarter hour increments.
- c. The agency should declare any leave taken that qualifies as FMLA leave. The FMLA leave should run concurrently with any other leave, and the leave should be charged against both leave categories' allowances.

4. Use of Paid and Unpaid Leave

Generally, FMLA leave is unpaid; however,

- a. An eligible employee will be required to substitute his accrued sick leave for unpaid FMLA leave when the FMLA leave request qualifies for sick leave usage; or
- b. An eligible employee may elect to substitute accrued annual leave for unpaid FMLA leave.

5. FMLA Leave Record

A leave record shall be maintained by the employing agency for each employee subject to the provisions of the FMLA. Such record shall:

- a. Reflect the maximum FMLA leave allowance (12 weeks in a calendar year) and charges in terms of hours.
- b. Indicate the number of FMLA leave hours used in the current calendar year.
- c. Indicate the number of hours in the employee's established workweek.

6. Transfer of FMLA Leave

For an eligible employee who transfers from one agency to another, the transferring agency is responsible for transferring the employee's FMLA leave records in that calendar year to the receiving agency.

**K. Hazardous Weather and Emergency Leave**

1. Upon issuing a Declaration of Emergency, the Governor has the authority to excuse all employees of State government from reporting to work during extreme weather or other emergency conditions. "Emergency conditions" means circumstances that would expose employees to harmful or unsafe conditions as determined by the Governor's Office. Unless such a Declaration of Emergency has been issued, all State government employees are expected to report to work.

Exception - Nothing contained in this regulation precludes the necessary immediate evacuation of a facility by an individual in an appropriate supervisory capacity in the interest of personal safety.

2. The Declaration may be applicable to all employees in the entire State, or only to those employees who live or work in one geographical region of the State, or a combination of geographical regions.
3. During a Declaration of Emergency, all essential and direct care services will be maintained. Each agency shall identify and notify essential employees by position, classification, or internal title. All other employees will not be expected to report to work.
4. Notification of Declaration of Emergency

Upon the communication of the Declaration of Emergency from the Governor's Office to the South Carolina Emergency Management Division, the South Carolina Emergency Management Division will communicate the Declaration of Emergency to each agency.

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### 5. Compensation During Declaration of Emergency

Notwithstanding any other provisions of law, when the Governor declares a state of emergency for the State or any portion of the State, he can provide State employees with leave with pay for absences from work due to the state of emergency for hazardous weather of up to five days for each declaration of a state of emergency. In the event that the Governor does not provide State employees with leave with pay, an employee who does not report to work or who reports late to work shall use annual leave or compensatory time to make up hours scheduled but not worked, take leave without pay, or be allowed to make up the hours at a time to be scheduled by the agency. The employee must be given the option of making up the hours if the employee so desires.

### L. Military Leave (Cross reference FMLA. Refer to Regulation 19-712.01 J. on qualifying exigencies.)

#### 1. Short Term Military Training

All officers and employees of this State or a political subdivision of this State, who are either enlisted or commissioned members of the South Carolina National Guard, the United States Army Reserve, the United States Air Force Reserve, the United States Naval Reserve, the United States Marine Corps Reserve, or the United States Coast Guard Reserve are entitled to leaves of absence from their respective duties without loss of pay, time, or efficiency rating, for one or more periods not exceeding an aggregate of 15 regularly scheduled average workdays in any one year during which they may be engaged in training or any other duties ordered by the Governor, the Department of Defense, the Department of the Army, the Department of the Air Force, the Department of the Navy, the Department of the Treasury, or any other department or agency of the government of the United States having authority to issue lawful orders requiring military service. Saturdays, Sundays, and State holidays may not be included in the 15-day aggregate unless the particular Saturday, Sunday, or holiday to be included is a regularly scheduled workday for the officer or employee involved. In the event any such person is called upon to serve during an emergency, he is entitled to such leave of absence for a period not exceeding 30 additional days. Any one year means either a calendar year or, in the case of members required to perform active duty for training or other duties within or on a fiscal year basis, the fiscal year of the National Guard or reserve component issuing the orders.

A state employee in a full time position who serves on active duty in a combat zone and who has exhausted all available leave for military purposes is entitled to receive up to thirty additional work days of military leave in any one year.

#### 2. Long Term Military Leave of Absence

Every employee of the State or any political subdivision thereof who, on or after June 25, 1950, has been, or shall be commissioned, enlisted, or selected for service in the Armed Forces of the United States (excluding short term training) shall, so long as the requirements and regulations of the Armed Forces shall prevent his return to his civil employment for a period of 90 days thereafter, but in no event for a period longer than five years from the date of entry into the Armed Forces of the United States, be entitled to leave of absence from his duties as an employee of the State or any political subdivision thereof, without loss of seniority or efficiency or register ratings. The word "employee" as used herein shall not be construed to mean an officer or official elected or appointed to a term pursuant to a statute or the Constitution of this State.

### M. Sabbatical Leave

When provided in statute, an institution of higher learning may establish a policy for a leave of absence for a sabbatical for academic personnel.

**N. State Employee Grievances and Appeals Attendance**

Refer to Regulation 19-712.01 F. 3. c. and d.

**O. Voting Leave**

An employee who lives at such distance from the assigned work location as to preclude voting outside of working hours may be authorized a maximum of two hours of leave with pay for this purpose. To work at the polls during elections, an employee must be on authorized leave.

**P. Workers' Compensation Leave**

1. If there is an accidental injury arising out of and in the course of employment with the State, which is covered under Workers' Compensation, an employee who is not eligible for or who has exhausted his paid administrative leave, shall make an election to use either earned leave time (sick or annual or both) or Workers' Compensation benefits awarded in accordance with Title 42 of the South Carolina Code of Laws.
2. The employee shall make an election under one of the following options:
  - a. To use sick leave, annual leave, or both. When earned leave is exhausted before the employee can return to work, the employee shall be entitled to Workers' Compensation benefits at the time leave is exhausted;
  - b. To use Workers' Compensation benefits awarded in accordance with Title 42 of the South Carolina Code of Laws, as amended; or
  - c. To use sick leave, annual leave, or both on a prorated basis in conjunction with Workers' Compensation benefits according to the formula approved by the Budget and Control Board.
3. Before the election is made, the effect of each available option on the employee's future leave earnings must be explained to the employee by the employing agency. The election must be in writing and signed by the employee and the person who explains the options. The election of the employee is irrevocable as to each individual incident.
4. Regardless of which option an employee elects, he would continue to be eligible for payment of medical costs provided by the State Accident Fund.

**Q. Organ Donor Leave**

All officers and employees of this State who wish to be an organ donor and who accrue annual or sick leave as part of their employment are entitled to leaves of absence from their respective duties without loss of pay, time, leave, or efficiency rating for one or more periods not exceeding an aggregate of 30 regularly scheduled workdays in any one calendar year during which they may engage in the donation of their organs. Saturdays, Sundays, and State holidays may not be included in the 30-day aggregate unless the particular Saturday, Sunday, or holiday to be included is a regularly scheduled workday for the officer or employee involved. The officer or employee must show documentation from the attending physician of the proposed organ donation before leave is approved that confirms that the employee is the donor.

**R. Leave of Absence**

To grant any leave of absence with or without pay, the agency must approve the leave of absence. An

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employee who is granted leave of absence with or without pay shall be:

1. An employee of the State while on such leave; and
2. Returned to the same position, or one in a comparable pay band for which the employee is qualified.

Any leave of absence must be approved in advance except in case of medical or personal emergencies. These situations must be justified to the agency head or his designee for approval.

### **S. Compensatory Leave for Part-Time Employees**

A part-time employee may be granted compensatory leave instead of being paid for time worked over the employee's scheduled hours in a workweek. Compensatory leave is earned on an hour-for-hour basis. Refer to Regulation 19-709.02 J. Overtime - Compensatory Time for nonexempt part-time employees who work in excess of 40 hours in a workweek.

Compensatory leave should be used before annual leave or leave without pay. All non-exempt employees shall be paid for unused compensatory leave prior to or upon separation from employment. Exempt employee shall not be paid for unused compensatory leave upon separation from employment.

## **19-712.02 OTHER LEAVE RECORDS**

- A. The agency shall maintain all leave records for each employee eligible for such leave. Such records must include the number of leave hours used during the current calendar year.
- B. Leave records shall be reviewed by or reported to the employee no less than once per calendar year and be supported by individual leave requests.

## **19-713 DUAL EMPLOYMENT**

### **SCOPE AND PURPOSE**

This regulation governs how employees in full-time equivalent (FTE) positions may accept additional temporary, part-time employment with the same or another agency.

### **19-713.01 STATEMENTS OF POLICY**

#### **A. General Provisions**

1. In accordance with this regulation, agencies may develop internal dual employment policies.
2. Dual employment shall be limited in duration to the specific time frame approved which cannot exceed 12 months.
3. The practice of dual employment should not be used to provide higher continuing salaries than those approved by the Budget and Control Board. An employee engaged in dual employment shall satisfy the requirements of the established hours of work for the employing agency.

4. No agency head may be dually employed by another agency or institution of higher education without prior approval by the Agency Head Salary Commission and the Budget and Control Board.

**B. Approval of Dual Employment**

1. The agency heads or their designees of the employing and requesting agencies, or the agency head or his designee when the dual employment is in the same agency, are responsible for approving dual employment requests prior to the beginning of the dual employment relationship.
2. Because the requesting agency is responsible for coordinating dual employment arrangements, the requesting agency will coordinate the approval and any modifications of the dual employment request with the employing agency.
3. The employing agency should process dual employment requests in a timely manner.

**C. Scheduling Dual Employment**

**1. Dual Employment Between Two Agencies**

Ordinarily, an employee's work schedule with the employing agency should not be altered or revised to provide time to perform dual employment duties for the requesting agency. However, an employee may be permitted to use annual leave or leave without pay to provide services during working hours for a requesting agency and may receive compensation from the requesting agency for services performed during the period of leave.

**2. Dual Employment Within an Agency**

An employee who performs services during other than normally scheduled hours of work for his employing agency may be considered to be performing dual employment and be paid additional compensation, if such services constitute independent, additional job duties from those of the employee's primary duties within the agency. No employee shall receive any additional compensation from the employing agency while in a leave with pay status to include all designated State holidays, annual leave, and compensatory time. The agency head should only approve dual employment within the same agency when extraordinary circumstances exist based on the agency's business needs.

**D. Compensation for Dual Employment**

1. No compensation for dual employment shall be paid to an employee prior to the approval of a dual employment agreement.
2. Both the employing agency and the requesting agency must comply with the provisions of the Fair Labor Standards Act (FLSA).
3. Compensation for dual employment will be determined by the requesting agency; however, the maximum compensation that an employee will be authorized to receive for dual employment in a fiscal year shall not exceed 30% of the employee's annualized salary with the employing agency for that fiscal year. The employing agency is responsible for ensuring that dual employment payments made to its employees within one fiscal year do not exceed the 30% limitation. The Office of Human Resources (OHR) is authorized to approve exceptions to the 30% limitation based on written justification submitted by the agency.

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4. Payment of dual employment compensation shall be made in a timely manner. The secondary agency must make payment of funds approved for and earned under dual employment within 45 days of the beginning of the employment.
5. No employee shall be eligible for any additional fringe benefits as a result of dual employment, including but not limited to annual leave, sick leave, military leave, State insurance, and holidays. However, dual employment compensation shall be subject to such tax and retirement deductions as required.

### **E. Dual Employment Recordkeeping**

1. All dual employment requests must be in writing and contain the following information:
  - a. Name of requesting agency;
  - b. Description of services to be performed, beginning and ending dates of the dual employment, hours of work, and the FLSA status of the work to be performed for the requesting agency;
  - c. Name of employing agency;
  - d. Name of employee, State title of the employee's position, the FLSA status of the employee's position at the employing agency, present annualized salary of employee, and scheduled hours of work at the employing agency;
  - e. Amount and terms of compensation, if applicable; and
  - f. Signature of the agency heads or their designees, of both the requesting and the employing agencies, authorizing the dual employment as well as the signature of the employee.
2. For each dual employment arrangement, both the employing and requesting agency must maintain the written dual employment request. When the dual employment is within the same agency, that agency must maintain a written dual employment request for each dual employment arrangement.

## **19-714 GOVERNMENT EMPLOYEES INTERCHANGE PROGRAM**

### **SCOPE AND PURPOSE**

This regulation governs the authority for administering an interchange program for government employees to facilitate short term assignments between or among federal, state, or local governments.

### **19-714.01 STATEMENTS OF POLICY**

- A. The Budget and Control Board has delegated to the State Human Resources Director the authority to administer an Interchange of Government Employees Program as provided in § 8-12-60 of the South Carolina Code of Laws.
- B. Agencies should refer to the Government Employees Interchange Program guidelines developed by the Office of Human Resources (OHR) for instructions on preparing an interchange agreement.

**19-715 EMPLOYEE PERFORMANCE EVALUATION SYSTEMS****SCOPE AND PURPOSE**

This regulation governs the establishment and administration of employee performance evaluation systems for employees.

**19-715.01 STATEMENTS OF POLICY**

- A. The Office of Human Resources (OHR) shall develop an EPMS model policy to assist an agency in its policy development. The Office of Human Resources must review and approve each agency's EPMS policy.
- B. Each agency shall develop an Employee Performance Management System that functions as an effective management tool within the agency, supports continuous communication between supervisors and employees, and provides a sound process for the evaluation of the performance and productivity of its employees.
- C. Teaching and research faculty, professional librarians, academic administrators, and all other persons holding faculty appointments at post-secondary educational institutions, including any branch campuses, shall not be covered by these regulations but shall be governed by § 8-17-380 of the South Carolina Code of Laws.
- D. Agency heads and other unclassified positions exempt from the State Employee Grievance Procedure Act are also exempt from the Employee Performance Management System. However, these employees shall be given annual performance evaluations.
- E. The State Human Resources Director shall have the authority to make exceptions to these regulations.

**19-715.02 ESTABLISHING AND MAINTAINING PERFORMANCE REVIEW DATES**

- A. A performance review date is the first day which marks the beginning of a new review period. If an employee does not receive a performance evaluation prior to the performance review date, the employee shall receive a "meets performance requirements" rating by default.
- B. In Probationary Status (*Refer to Regulation 19-704.*)
  - 1. Upon initial employment or reemployment, the performance review date shall be established as:
    - a. Twelve months from the date of an initial employment or reemployment;
    - b. The academic year for instructional personnel; or
    - c. Not more than two full academic years duration for faculty at State technical colleges.
  - 2. The performance review date for a probationary employee who is promoted, demoted, reclassified, experiences an unclassified State title change, or is reassigned or transferred to a new class or unclassified State title shall be established as:
    - a. Twelve months from the date of the promotion, demotion, reclassification, or reassignment or transfer to a new class or unclassified State title change for non-instructional personnel;
    - b. The academic year duration from the date of the promotion, demotion, reclassification, or

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reassignment or transfer to a new class or unclassified State title for teachers; or

- c. Not more than two full academic years duration from the date of the promotion, demotion, unclassified State title change, or reassignment or transfer to another unclassified State title for faculty at State technical colleges.
3. Exception - At the discretion of the agency head or his designee, up to six months of continuous satisfactory service in the previous class or unclassified State title may be counted toward the probationary period in the new class or unclassified State title which would result in a reduction in the length of the employee's performance review period.

### C. In Trial Status (*Refer to Regulation 19-704.*)

1. A covered employee who is promoted, demoted, reclassified, reassigned, or transferred to a position or experiences an unclassified State title change in which he has not held permanent status in the class or unclassified State title shall have the performance review date reestablished six months from the date of the action.
2. An employee who is in a trial status and has had the trial period extended shall have the performance review date advanced up to 90 calendar days for the time period such extension is in effect.
3. Exception - An employee who is promoted and, prior to attaining permanent status in the class with a higher State salary range, or unclassified State title having a higher State salary range or higher level job duties or responsibilities, is demoted to the same class or unclassified State title from which promoted, shall retain the original performance review date established in the class with a lower State salary range, or unclassified State title having a lower State salary range or lower level job duties or responsibilities.

### D. Covered Employees with Permanent Status in the Class or Unclassified State Title

If a covered employee with permanent status in the class or unclassified State title is promoted, demoted, reclassified; experiences an unclassified State title change; or is reassigned or transferred to a new class or unclassified State title in which the employee has previously completed a probationary or trial period, the employee retains permanent status in the class or unclassified State title and is not placed in a probationary or trial status. Instead, the employee's performance review date is reestablished six months from the date of the promotion, demotion, reclassification, reassignment, or transfer.

### E. An employee's performance review date shall be changed for the following reasons:

1. An employee on approved leave with or without pay for more than 30 consecutive workdays may have the performance review date advanced up to 90 days after those first 30 workdays.
2. A covered employee who within 30 calendar days of his performance review date receives a "Warning Notice of Substandard Performance," shall have the performance review date advanced up to 90 days.
3. An employee's performance review date may be adjusted due to promotions, demotions, reclassifications, reassignments, transfers, or unclassified State title changes, as provided in Regulation 19-715.
4. A covered employee who transfers to a position in the same class in another agency or is

reassigned to a position in the same class and agency within six months or less of his review date shall have the performance review date advanced six months from the date of the transfer or reassignment.

5. An employee's performance review date may be adjusted when an agency adopts a universal performance review date in its written EPMS policy.
6. An employee, who is promoted or reclassified upward and prior to attaining permanent status in the class with a higher State salary range or in the unclassified State title having a higher State salary range or higher level of job duties or responsibilities, and is demoted or reclassified downward to the same class or unclassified State title from which promoted or reclassified upward, shall retain the original performance review date established in the class with a lower State salary range or unclassified State title having a lower State salary range or lower level of job duties or responsibilities.

F. An employee's performance review date shall not be changed for the following reasons:

1. A covered employee who transfers to a position in the same class in another agency or is reassigned to a position in the same class and agency who is more than six months from his review date shall have the performance review date advanced six months from the date of the transfer or reassignment.
2. When a class is reallocated, an employee in that class shall not have the performance review date reestablished.
3. An employee who receives an in-band increase or decrease within the current class shall not have the performance review date reestablished.

**19-715.03 ESTABLISHING AND MAINTAINING PERFORMANCE REVIEW DATES FOR EMPLOYEES IN THE EXECUTIVE COMPENSATION SYSTEM**

A. For Employees Covered by the State Employee Grievance Procedure Act

Upon completion of a probationary or trial period, the performance review date of a covered employee in the Executive Compensation System shall be reestablished on July 1.

B. Employees Exempt From Coverage by the State Employee Grievance Procedure Act

Annual performance evaluations shall be completed by July 1 for employees in the Executive Compensation System who are exempt from coverage by the State Employee Grievance Procedure Act. Such employees do not serve a probationary period or a trial period.

C. Exception - The performance review date for the above categories of employees shall be July 1, unless the agency adopts a universal performance review date in its written EPMS policy.

**19-715.04 ESTABLISHING AND MAINTAINING PERFORMANCE REVIEW DATES FOR AGENCY HEADS**

Annual performance evaluations shall be completed by July 1 for agency heads.

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### **19-716 STAFF DEVELOPMENT AND TRAINING**

#### **SCOPE AND PURPOSE**

This regulation governs staff development and training programs for agencies but does not affect sabbatical leave for academic personnel.

#### **19-716.01 STATEMENTS OF POLICY**

- A. An agency may sponsor training for employees to improve or secure those skills necessary for the efficient and effective operations of the agency and to ensure uniformity in the administration of staff development and training programs throughout the State service.
- B. The agency head or his designee shall be responsible for the administration of staff development and training within the agency.

#### **19-716.02 EDUCATIONAL LEAVE**

An employee is encouraged to schedule classes during off-duty hours, whenever possible. When a class cannot be scheduled during off-duty hours, the agency may adjust the employee's work schedule, if doing so will not interfere with normal efficient operations of the agency. When a class cannot be scheduled during off-duty hours, and the agency cannot feasibly adjust the work schedule of an employee, an employee may be allowed to take annual leave or be granted leave without pay in order to attend classes.

#### **19-716.03 REQUIRED COURSES**

An agency may require an employee to take a specific course that will help improve the employee's performance in the present position or acquire skills necessary to perform additional job duties to meet agency needs. If required, the agency will then pay all costs of the course, including tuition, fees, books, and examinations. An agency shall not pay for courses required to attain nor to maintain a professional license unless related to the performance of the employee's job duties. Attendance at required courses may constitute work time.

#### **19-716.04 TUITION ASSISTANCE**

- A. Agencies may provide tuition assistance to employees based on the guidelines recommended by the Office of Human Resources (OHR) and approved by the Budget and Control Board.
- B. When staff development and training needs cannot be accomplished within the Tuition Assistance Guidelines, the agency may submit a proposal to the Budget and Control Board for approval.
  1. Approval of the proposal by the Budget and Control Board must precede the selection of employees for training. Each proposal shall include the following information:
    - a. Program justification based on agency needs;
    - b. Description of the courses;
    - c. All classes and the number of positions in each class in the requested program;
    - d. Fiscal year cost estimates for participation in the requested program; and
    - e. A service commitment and payback agreement.

2. Except as provided above, any other forms of educational assistance for employees or non-employees may not be given by agencies unless authorized by statute or by the Budget and Control Board.

## **19-717 DISCIPLINARY ACTIONS**

### **SCOPE AND PURPOSE**

This regulation governs the administration of progressive discipline for employees in full-time equivalent (FTE) positions.

#### **19-717.01 STATEMENTS OF POLICY**

- A. The Office of Human Resources (OHR) shall develop a progressive discipline model policy to assist an agency in its policy development. The Office of Human Resources must review and approve each agency's progressive discipline policy.
- B. Each agency shall develop a progressive discipline policy and establish procedures that will ensure timely and equitable treatment of employees' behavioral deficiencies and breaches of conduct.
- C. Whenever possible, coaching and counseling should precede any disciplinary action.
- D. Each agency's progressive discipline policy should provide for the following types of disciplinary actions:
  1. Oral Reprimand
  2. Written Reprimand
  3. Suspension
  4. Termination

An agency may also use reassignments, reclassifications, unclassified State title changes, and demotions as types of disciplinary actions.

- E. All suspensions shall be without pay.

## **19-718 STATE EMPLOYEE GRIEVANCES AND APPEALS**

### **SCOPE AND PURPOSE**

This regulation sets forth the procedures for grievances and appeals under the State Employee Grievance Procedure Act (the Act), codified at § 8-17-310 through § 8-17-370 of the South Carolina Code of Laws, as amended.

#### **19-718.01 STATEMENTS OF POLICY**

- A. The Office of Human Resources (OHR) shall develop a grievance model policy to assist an agency in its policy development. The Office of Human Resources must review and approve each agency's grievance policy.

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- B. Each agency shall develop a grievance policy and established procedures that will ensure timely and equitable treatment for the review of the employee's grievances.
- C. All covered employees are eligible to initiate a grievance or an appeal as specified in the Act.
- D. Teaching and research faculty, professional librarians, academic administrators, and all other persons holding faculty appointments at post-secondary educational institutions, including any branch campuses, shall not be covered by these regulations but shall be governed by § 8-17-380 of the South Carolina Code of Laws.
- E. No employee shall be disciplined or otherwise prejudiced in employment for exercising rights or testifying under the Act.

### **19-718.02 INTERNAL AGENCY GRIEVANCE PROCEDURES**

- A. Each notice of an employment action that may constitute a grievance under the Act should be in writing. A voluntary acceptance of such an action on the part of a covered employee should also be in writing. The notice must advise the covered employee of the action taken and, except in cases where the action is voluntary as evidenced by a signed statement by the covered employee, should advise of the covered employee's right to initiate a grievance.
- B. Each agency shall establish written internal agency grievance procedures. All provisions shall comply fully with the Act and, as provided for in the Act, be submitted to OHR for approval.
- C. Each agency shall ensure that each covered employee is afforded access to a copy of the agency's internal agency grievance procedures.
- D. Each agency shall ensure that grievance information is recorded accurately and timely as required by the Office of Human Resources.

### **19-718.03 COVERED EMPLOYEES AND THEIR REPRESENTATIVES**

- A. "Covered employee" means a full-time or part-time employee occupying a part or all of an established full-time equivalent (FTE) position who has completed the probationary period and has a "meets" or higher overall rating on the employee's performance evaluation and who has grievance rights. Instructional personnel are covered upon the completion of one academic year except for faculty at State technical colleges of not more than two full academic years' duration. If an employee does not receive an evaluation before the performance review date, the employee must be considered to have performed in a satisfactory manner and be a covered employee. This definition does not include employees in positions such as temporary, temporary grant, or time-limited employees who do not have grievance rights.
- B. Throughout the grievance and appeal process, each covered employee may be represented and advised by counsel or other representative or be self-represented.
- C. The Act exempts certain employees from its provisions as noted in § 8-17-370 of the South Carolina Code of Laws.

### **19-718.04 GRIEVANCES**

- A. Grievances shall include terminations, suspensions, involuntary reassignments, and demotions. Reclassifications are considered a grievance only if an agency, or an appeal if the State Human Resources Director, determines that there is a material issue of fact that the action is a punitive

reclassification. However, reclassifications, reassignments, and transfers within the same salary range are not adverse employment actions which may be considered grievances or appeals. Promotions are not adverse employment actions which may be considered grievances or appeals except in instances where the agency, or in the case of appeals, the State Human Resources Director, determines that there is a material issue of fact as to whether or not an agency has considered a qualified covered employee for a position for which the employee formally applied or would have applied if the employee had known of the promotional opportunity. When an agency promotes an employee one organizational level above the promoted employee's former level, that action is not a grievance or appeal for any other qualified covered employee. Salary decreases based on performance are adverse employment actions that may be considered as grievances or appeals. A reduction in force is an adverse employment action considered as a grievance only if the agency, or as an appeal if the State Human Resources Director, determines that there is a material issue of fact that the agency inconsistently or improperly applied its reduction in force policy or plan.

- B. A covered employee must initiate a grievance in writing internally with the agency within 14 calendar days of the effective date of the employment action.
- C. The following examples of employment actions do not constitute a basis for a grievance or an appeal:
  1. A covered employee who voluntarily resigns or voluntarily accepts a demotion, reclassification, transfer, reassignment, or salary decrease shall waive any and all rights to file a grievance or an appeal concerning such actions and the covered employee can rescind such voluntary actions only if the agency head or the agency head's designee agrees;
  2. A covered employee whose position is reclassified to a class with a lower salary range shall not have the right to file a grievance or an appeal concerning the reclassification to the State Human Resources Director unless a determination is made that a material issue of fact exists concerning a punitive reclassification;
  3. A covered employee who is promoted and subsequently demoted prior to serving six months of satisfactory service in the class with the higher salary range shall not have the right to file a grievance or an appeal concerning the demotion, unless such demotion is to a class with a lower salary range than the class in which the employee was serving prior to promotion;
  4. A covered employee who is promoted and subsequently receives a reduction in pay prior to completing six months of satisfactory service in the class with the higher salary range shall not have the right to file a grievance or an appeal concerning the reduction in pay, unless the action results in a lower rate of pay than that which the employee was receiving prior to promotion; and
  5. A covered employee who receives an additional job duties or responsibilities salary increase, and subsequently has the additional job duties or responsibilities which justified the salary increase taken away prior to completing six months of service with the additional job duties or responsibilities, shall not have the right to file a grievance or an appeal concerning a salary reduction equivalent to the amount of the additional job duties or responsibilities increase.

**19-718.05 APPEALS TO THE STATE HUMAN RESOURCES DIRECTOR**

- A. If a covered employee is not satisfied with the agency's final decision concerning his grievance, he may appeal, after all administrative remedies to secure relief within the agency have been exhausted, to the State Human Resources Director who will determine whether to dismiss the appeal or remand or forward the appeal for further action.

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- B. A covered employee who wishes to appeal the decision of the agency grievance procedure to the State Human Resources Director shall file an appeal within ten calendar days of receipt of the decision from the agency head or his designee or within 55 calendar days after the employee files the grievance with the agency, whichever occurs later. The covered employee or the employee's representative shall file the request in writing with the State Human Resources Director. Failure to file an appeal with the State Human Resources Director within ten calendar days of the agency's final decision or 55 calendar days from the initial grievance, whichever occurs later, constitutes a waiver of the right to appeal. The time periods for appeal to the State Human Resources Director may not be waived.
- C. The Office of Human Resources shall develop standard forms to be used in all appeal procedures.
- D. Upon receipt of an appeal from a covered employee, the State Human Resources Director shall:
  - 1. Acknowledge receipt of the appeal and require that the covered employee submit a standard appeal application form;
  - 2. Upon receipt of the standard appeal application form, notify the agency to furnish the State Human Resources Director a copy of all records, reports, and documentation of the earlier proceedings on the grievance within 15 calendar days following the request, unless an extension is granted; and
  - 3. Determine whether the appeal is timely and complies with the jurisdictional requirements of the Act.
- E. If the State Human Resources Director determines that the appeal is untimely or fails to comply with the requirements of the Act, he will notify the covered employee or his representative that the appeal is denied and no further action will be taken concerning the appeal. As a result of the State Human Resources Director's decision, the covered employee may request reconsideration within 30 calendar days from notification of the decision. A notice of appeal seeking appellate review of the decision may be made by the covered employee to the Administrative Law Court as provided in Sections 1-23-380 (B) and 1-23-600 (D) of the South Carolina Code of Laws.
- F. If the State Human Resources Director determines that additional action by the agency is necessary and appropriate, he may remand the appeal to the agency.
- G. If the State Human Resources Director determines that the covered employee has pending related criminal charges against him, the appeal process may be held in abeyance pending the outcome of those charges. If the appeal is held in abeyance, the covered employee or his representative must notify OHR within 30 calendar days after the disposition of the charges has been determined in order to preserve the covered employee's right to further pursue his appeal. Failure to contact OHR within those 30 calendar days will be deemed a waiver and abandonment of the appeal.
- H. If the State Human Resources Director determines that the appeal is timely and complies with the requirements of the Act, he will forward the appeal either (1) to the mediator-arbitrator for mediation-arbitration or (2) after the mediation process has been completed, to the designated panel of the State Employee Grievance Committee [Committee] and Committee Attorney for a hearing, whichever is appropriate based on the type of adverse employment action.
- I. When an appeal is forwarded to a designated Committee panel, the State Human Resources Director will notify the covered employee and the agency with a statement as to the issues which have been presented by the parties for presentation before the Committee for decision.
- J. The official record on each appeal and all related correspondence and documents shall be maintained in a confidential file by OHR.

- K. The State Human Resources Director will send the notices and correspondence pertaining to an appeal directly to the parties. When a party designates a representative, the State Human Resources Director will send all notices and correspondence to that representative, rather than to the party.

**19-718.06 MEDIATION PRIOR TO STATE EMPLOYEE GRIEVANCE COMMITTEE HEARINGS**

- A. "Mediation" means an alternative dispute resolution process whereby a mediator who is an impartial third party acts to encourage and facilitate the resolution of a dispute without prescribing what it should be. The process is informal and nonadversarial with the objective of helping the disputing parties reach a mutually acceptable agreement.
- B. Once an appeal has been made to the State Human Resources Director and has been determined to meet the jurisdictional requirements for an appeal to be forwarded to the Committee, the State Human Resources Director shall appoint a mediator to the appeal of the following adverse employment actions: terminations, salary decreases based on performance, demotions, suspensions for more than ten days, and reductions in force when the State Human Resources Director determines there is a material issue of fact regarding inconsistent or improper application of the agency's reduction in force plan or policy.
- C. The mediator:
  - 1. Shall review the documents which have been submitted by each party to the State Human Resources Director and schedule time(s) and location(s) to meet with both parties, jointly or independently, to attempt to resolve the matter;
  - 2. Has sole authority to determine whether the meeting includes the parties with their representatives, jointly or independently;
  - 3. Should determine when the mediation is not viable, that an impasse exists, or that the mediation should end but the mediation cannot be unilaterally ended without the permission of the mediator; and
  - 4. Should notify each party in writing as to the status of the mediation process no later than ten calendar days prior to the scheduled Committee hearing.
- D. Mediation Conferences
  - 1. Mediation conferences are confidential and limited to no more than three representatives, including legal counsel and the covered employee, for each party. An observer who has been assigned to conduct mediations for OHR may attend for training purposes if both parties to the mediation concur.
  - 2. The parties or their representatives attending a mediation conference must have full authority to negotiate and recommend settlement.
  - 3. Each covered employee is entitled to representation at the mediation conference and either the covered employee or his representative must attend. If neither the covered employee nor his representative attend a conference, the covered employee is deemed to have waived his rights to pursue the appeal further unless there is reasonable justification for the failure to attend the conference. The State Human Resources Director shall determine whether or not reasonable justification exists based on documents submitted by the parties on this issue and based on other information available relating to the conference. Documents submitted by the parties on the issue

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of reasonable justification must be received by OHR no later than 14 calendar days from the date of the scheduled conference. Denial of reasonable justification by the State Human Resources Director concludes the processing of the covered employee's appeal.

4. If the dispute is resolved, the mediator will assist the parties in preparing a written agreement to reflect the terms of the resolution and may consult with the attorney for OHR to assist in drafting the agreement.

### E. Confidentiality

1. Any discussions by any of the parties concerned during the mediation process shall be kept confidential and shall not be used or referred to during subsequent proceedings.
2. The mediator may not be compelled by subpoena or otherwise to divulge records or discussions or to testify in regard to the mediation in any adversary proceeding or judicial forum.
3. All records, reports, documents, discussions, and other information received by the mediator while serving in that capacity are confidential.

## 19-718.07 APPEALS FORWARDED TO THE STATE EMPLOYEE GRIEVANCE COMMITTEE

- A. If a resolution through mediation as required by Regulation 19-718.06 of the State Human Resources Regulations cannot be accomplished, the State Human Resources Director shall forward the appeal to the designated Committee panel of the Committee.
- B. No more than three representatives, including legal counsel and the covered employee, may be designated by either party to be present during Committee hearings.

### C. Witnesses

1. Notice - After an appeal has been determined to be appealable to the Committee and has been placed on the Committee's docket, the covered employee and the agency, or their designated representatives, shall exchange witness lists which must be received by the other party no later than five calendar days prior to the hearing. The postponement of a hearing does not reinstate any time frame that has already elapsed at the time of the request to reschedule. Witness lists which have not been exchanged as required by this provision and witnesses not included on a properly exchanged list will be excluded at the hearing unless the Committee finds that there has been excusable neglect or that the witness(es) should be admitted in the furtherance of justice.
2. Character Witnesses - No more than two character witnesses for each side will be permitted to testify before the Committee when evidence of character is relevant to the issues. A character witness is defined as a witness offered solely for the purpose of presenting testimony which bears on the positive or negative general character of the covered employee, i.e., the covered employee's reputation for truthfulness, peaceful or violent manner, or other considerations of character which have a bearing on the matter before the Committee.
3. Subpoenas - Only the Committee Chairman or his designee is authorized to issue subpoenas for witnesses at the request of either party. In the event that either party in a case has difficulty in obtaining a witness's agreement to testify, such party must request in writing the issuance of a subpoena which must be received by OHR no later than ten calendar days before the date of the hearing. The postponement of a hearing does not reinstate any time frame that has already elapsed at the time of the request to reschedule. The request for a subpoena must include the name of the witness. The service of the subpoena is the responsibility of the requesting party. When any person

fails to comply with a subpoena, the requesting party is responsible for the pursuance and cost of any judicial enforcement of that subpoena. Any reasonable expenses incurred by a subpoenaed witness shall be paid by the requesting party.

4. Sequestration of Witnesses - Witnesses other than representatives that will be witnesses shall be sequestered and shall not be in the hearing room except for preliminary comments, the Committee's opening statement, and that witness's testimony in a public hearing or a hearing held in executive session.
5. Depositions de bene esse - The testimony of a witness may be submitted into evidence in the form of a deposition de bene esse when the attendance of the witness whose testimony is required cannot be had (a) by reason of (i) extreme age, (ii) sickness or infirmity, or (iii) indispensable absence on public official duty, (b) as a result of verification of his intended absence from the State before the appeal can be heard by the designated Committee panel, or (c) when such witness may be without the limits of the State. If the parties cannot agree to the use of a deposition de bene esse, the party desiring to submit the deposition de bene esse may request permission from the Committee Chairman or his designee and the Committee Attorney to submit the deposition de bene esse. The party opposing the submission will be permitted an opportunity to respond to the request. The request and the response may be made either in writing before or verbally at the hearing. When the parties agree upon, or a party's request is granted for the use of, a deposition de bene esse, notice must be exchanged as to the time of the deposition de bene esse to allow all interested parties to attend and participate. No other types of depositions, including discovery depositions, are permitted.

**D. Documents**

1. Submission to OHR and Exchange by the Parties - Any records, reports, and documentation submitted by either party to be forwarded to the Committee prior to the hearing must be received by OHR no later than 15 calendar days prior to the hearing. The postponement of a hearing does not reinstate any time frame that has already elapsed at the time of the request to reschedule. Those documents submitted by both parties will be provided by OHR to committee members prior to the hearings and considered to be the record during the hearing and marked into evidence as Committee Exhibit I. Each covered employee granted a hearing before the Committee will receive a copy of the records, reports, and documentation submitted by the agency. In like manner, a copy of any records, reports, and documentation filed by a covered employee will be sent to the agency.
2. Subpoenas - Only the Committee Chairman or his designee is authorized to issue subpoenas for files, records, and documentation on the grievance at the request of either party. In the event that either party in a case has difficulty in obtaining the production of files, records, and documentation on the grievance, such party must request in writing the issuance of a subpoena which must be received by OHR no later than ten calendar days before the date of the hearing. The postponement of a hearing does not reinstate any time frame that has already elapsed at the time of the request to reschedule. The request for a subpoena must include a description sufficiently specific to identify the documents in question and the name of the custodian of the documents in question. The service of the subpoena is the responsibility of the requesting party. When any person fails to comply with a subpoena, the requesting party is responsible for the pursuance and cost of any judicial enforcement of that subpoena. Any reasonable expenses incurred in the production of the documents shall be paid by the requesting party. Subpoenaed documents shall be received by the requesting party no later than five calendar days prior to the hearing.

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### 3. Committee Exhibit I

- a. The State Human Resources Director shall arrange for the reproduction of records, reports, and documentation timely submitted by both parties and make this information available, prior to the date of the hearing, to the designated Committee panel and Committee Attorney for that hearing.
- b. The documents transmitted by the State Human Resources Director to the designated Committee panel and Committee Attorney must be marked into evidence as "Committee Exhibit I" during the Committee Chairman's opening statement at the beginning of the hearing unless excluded by the Committee Attorney based on a prior objection raised by either party.

### E. Panel Hearings

1. **Scheduling and Notice** - The State Human Resources Director shall establish a date, time, and place for the hearing of each appeal and provide reasonable notice to the covered employee, agency, designated Committee panel, and Committee Attorney. Prior to the commencement of the hearing, the State Human Resources Director has the authority to grant a postponement based upon extenuating circumstances such as illness or death.
2. **Executive Session Hearings** - All hearings before the State Employee Grievance Committee shall be in executive session unless the employee requests a public hearing in accordance with the Freedom of Information Act prior to the designated Committee panel voting to go into executive session. If the hearing is held in executive session, only the designated Committee panel, the parties involved in a hearing, the Committee Attorney, and persons approved by the designated Committee Chairman may attend.
3. **Committee Members**
  - a. The Committee shall consist of at least 18 and not more than 24 members who must be appointed by the Budget and Control Board in accordance with the Act.
  - b. The State Human Resources Director may divide the Committee into panels of five members to sit at hearings and designate a member to serve as the presiding officer and a member to serve as secretary at all panel hearings.
  - c. A chairman shall be elected from the membership of the Committee each year after approval of membership of new members by the Budget and Control Board. A meeting for election of a chairman shall be held as soon as practicable after appointments are made.
  - d. A quorum of a panel shall consist of at least three Committee members. No hearings may be conducted without a quorum.
  - e. Whenever an appeal before the Committee is initiated by or involves an employee of an agency of which a Committee member also is an employee or involves another impermissible conflict of interest, the Committee member is disqualified from participating in the hearing.
4. **Committee Attorney**
  - a. The Budget and Control Board is authorized to request assignment by the Attorney General of one or more of his staff attorneys admitted to practice law in South Carolina to serve in the capacity of Committee Attorney. If the Attorney General is not able to provide sufficient legal staff for this purpose due to an impermissible conflict of interest, the Budget and Control

Board, with the approval of the Attorney General, is authorized to secure other qualified attorneys to serve as Committee Attorney.

- b. The Committee Attorney shall determine the order and relevance of the testimony and the appearance of witnesses, and shall rule on all motions and all legal issues.
5. Continuances and Postponements
  - a. Panel hearings will be conducted on the date and at the time scheduled unless the Committee, acting collectively or through its designated Committee Chairman, upon commencement of a hearing, grants a postponement based upon extenuating circumstances.
  - b. Each covered employee is entitled to representation at the panel hearing and either the covered employee or his representative must attend. If neither the covered employee nor his representative attend the panel hearing, the covered employee is deemed to have waived his rights to pursue the appeal further unless there is reasonable justification for the failure to attend the panel hearing. The State Human Resources Director shall determine whether or not reasonable justification exists based on documents submitted by the party on this issue and based on other information available relating to the panel hearing. Documents submitted by the party on the issue of reasonable justification must be received by OHR no later than 14 calendar days from the date of the scheduled panel hearing. Denial of reasonable justification by the State Human Resources Director concludes the processing of the covered employee's appeal.
  - c. If the agency fails to appear at the panel hearing without reasonable justification, the designated Committee panel will base its decision on a review of Committee Exhibit I and a presentation of the case by the covered employee.
6. Administrative Assistance, Recordings of Hearings, and Transcripts
  - a. The State Human Resources Director shall provide to the Committee from the resources of OHR such administrative and clerical services as may be required.
  - b. All proceedings before the Committee shall be recorded by OHR. The recording shall be preserved in accordance with the retention schedule of OHR.
  - c. The covered employee or the agency who first files the notice of appeal seeking appellate review of a Committee decision is responsible for preparation of a transcript and paying the costs of preparation of a transcript of the hearing required for certification of the record to the Administrative Law Court. In addition, the appealing party is responsible for all costs associated with providing the record on appeal for the Administrative Law Court.
7. Submission of Witness and Representative Lists to Committee - At the beginning of the hearing, each party shall provide to the secretary of the designated Committee panel a list of representatives and witnesses. Representatives who will testify must be listed as both a representative and a witness. Witness lists which have not been exchanged as required by Regulation 19-718.07 C. 1. of the State Human Resources Regulations and witnesses not included on a properly exchanged list will be excluded at the hearing unless the Committee finds that there has been excusable neglect or that the witness(es) should be admitted in the furtherance of justice.
8. Conduct of Hearings - The presiding Committee Chairman shall conduct the grievance hearing in an equitable, orderly, and expeditious fashion. The Committee will give effect to rules of privilege

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recognized by law. The parties shall be bound by the decisions of the presiding officer or Committee Attorney insofar as such hearings are concerned.

### 9. Opening Statements and Order of Presentation of the Case

- a. The designated Committee Chairman shall open the hearing by explaining the procedures to be followed in the hearing.
- b. Each party shall be given an opportunity to make an opening statement.
- c. The covered employee shall present his case first, followed by the agency.

### 10. Direct and Cross Examinations

- a. The testimony of witnesses shall be under oath or affirmation.
- b. Each party shall have the right to examine and cross-examine witnesses, as appropriate.
- c. The designated Committee Chairman, the Committee Attorney, or any member of the designated Committee panel may direct questions to any party or witness at any time during the proceedings.
- d. Each party may object to testimony, questions, or documents.

### 11. Evidentiary Matters - Evidentiary matters as governed by the South Carolina Administrative Procedures Act will apply in hearings before the Committee.

### 12. Interpretations from OHR - The designated Committee Chairman of a designated Committee panel may request information or assistance in interpretations of rules and regulations from the State Human Resources Director.

### 13. Closing Statement

- a. Before closing the hearing, the designated Committee Chairman shall allow the parties to make a closing statement.
- b. The covered employee will have the option of closing first or last.

## F. Written Committee Decisions

1. The designated Committee panel shall retire into a separate executive session, without the parties present, to receive legal advice from the Committee Attorney and consider the evidence. The Committee Attorney may be present during the Committee's deliberations on its decision only upon the request of the designated Committee Chairman. No vote by the designated Committee panel may be taken in executive session.
2. The vote of each member of the designated Committee panel on the merits of the appeal shall be recorded.
3. Decisions of the Committee shall be determined by a simple majority of those members who heard the appeal.

4. Within 20 calendar days of the conclusion of the hearing, the designated Committee panel shall make its final written decision.
5. The final decision of the Committee as it relates to an appeal shall include the (1) findings of fact, (2) statements of policy and conclusions of law, and (3) the Committee's decision.
6. As governed by the provisions of the Act, the Committee may sustain, reject, or modify a grievance hearing decision of an agency.
7. Any member agreeing with the majority decision but differing with the rationale may prepare a concurring decision. Any member voting in the minority may prepare a dissenting opinion.
8. The Committee Attorney or the attorney for OHR or both may assist the Committee in the preparation of its findings of fact, statements of policy, and conclusions of law.
9. The decision of the Committee shall be transmitted to the State Human Resources Director for notification of the covered employee and the employing agency or their representatives.
10. As a result of this final written decision, either the covered employee or the agency may request reconsideration within 30 calendar days from receipt of the decision.
11. The designated Committee panel shall request assistance from the Committee Attorney or the attorney for OHR or both in the preparation of a written response to a request for reconsideration.
12. If no request for reconsideration is made or when a response is made to a request for reconsideration, the Committee decision is final in terms of administrative review.

**19-718.08 APPEALS FORWARDED TO A MEDIATOR-ARBITRATOR**

- A. "Mediation-arbitration" means an alternative dispute resolution process that provides for the submission of an appeal to the mediator-arbitrator, an impartial third party who conducts conferences to attempt to resolve the grievance by mediation and render a decision that is final and binding on the parties if the appeal is not mediated.
- B. The State Human Resources Director shall forward to a mediator-arbitrator all appeals which meet jurisdictional requirements and relate to the appeal of the following adverse employment actions: lack of promotional consideration and punitive reclassifications when the State Human Resources Director determines there is a material issue of fact regarding these issues, suspensions for ten days or fewer, and involuntary reassignments. In these cases, the arbitration decision is final in terms of administrative review.
- C. Selection and Assignment of the Mediator-Arbitrator
  1. The mediator-arbitrator must be assigned by the State Human Resources Director and shall serve as an impartial third party to hold conferences to encourage and facilitate the resolution of the appeal and, if the appeal is not resolved, issue a decision which determines whether the covered employee substantiated that the agency's decision was not reasonable.
  2. The State Human Resources Director shall maintain a pool of qualified mediator-arbitrators trained by OHR in alternative dispute resolution, grievance, and related human resources issues.
  3. The State Human Resources Director shall have the discretion to assign either two mediator-arbitrators, one to serve as mediator during the mediation phase and one to serve as arbitrator

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during the arbitration phase, or one mediator-arbitrator to serve as both mediator and arbitrator. If the State Human Resources Director assigns one mediator-arbitrator to serve as both mediator and arbitrator or an individual to serve as only the arbitrator during the arbitration phase, the following shall apply:

- a. The State Human Resources Director shall send simultaneously to each party a list of five names of potential mediator-arbitrators from the pool along with a description of the professional experience of each potential mediator-arbitrator.
- b. Each party shall have five calendar days from the date of receipt of the names in which to strike up to two names and return the list to the State Human Resources Director.
- c. If OHR does not receive the list from the party within five calendar days from the date the party received the list, all persons named in the list shall be deemed acceptable.
- d. From among the persons who have been approved on both lists, the State Human Resources Director shall appoint a mediator-arbitrator for that appeal. If the parties fail to agree on any of the persons named, or if the State Human Resources Director determines that an acceptable mediator-arbitrator from the list submitted to the parties is unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the State Human Resources Director shall have the authority to make an assignment from among other members of the mediator-arbitrator pool without the submission of additional lists.

### D. Mediation-Arbitration Conferences

1. The mediator-arbitrator shall review the documents which have been submitted by each party to the State Human Resources Director and shall schedule time(s) and location(s) to meet with both parties, jointly or independently.
2. No more than three representatives, including legal counsel and the covered employee, may be designated by either party to be present during mediation-arbitration conferences. An observer who has been assigned to conduct mediation-arbitrations for OHR may attend for training purposes if both parties to the mediation-arbitration conference concur.
3. Each covered employee is entitled to representation at the conference and either the covered employee or his representative must attend. If neither the covered employee nor his representative attend a conference, the covered employee is deemed to have waived his rights to pursue the appeal further unless there is reasonable justification for the failure to attend the conference. The State Human Resources Director shall determine whether or not reasonable justification exists based on documents submitted by the parties on this issue and based on other information available relating to the conference. Documents submitted by the parties on the issue of reasonable justification must be received by OHR no later than 14 calendar days from the date of the scheduled conference. Denial of reasonable justification by the State Human Resources Director concludes the processing of the covered employee's appeal.
4. If the agency fails to appear at a conference without reasonable justification, the mediator-arbitrator will base an arbitration decision on a review of the documents which have been submitted by each party to the State Human Resources Director and a presentation of the case by the covered employee.
5. The parties or their representatives attending a conference must have full authority to negotiate and recommend settlement.

## E. Mediation Phase

1. The mediator-arbitrator has sole authority to determine whether conferences during the mediation phase include the parties with their representatives, jointly or independently.
2. Initially, the mediator-arbitrator will attempt to assist the parties as a mediator in reaching a voluntary mutual resolution of the appeal.
3. The mediation phase cannot be unilaterally ended nor the arbitration phase begun without the permission of the mediator-arbitrator.
4. If the dispute is resolved, the mediator-arbitrator will assist the parties in preparing a written agreement to reflect the terms of the resolution and may consult with the attorney for OHR to assist in drafting the agreement.

## F. Arbitration Phase

1. If the mediator-arbitrator determines that the parties are unable to reach a resolution of the appeal by mediation during, but no later than, the 20 calendar days immediately following the initial conference with either or both parties, then the mediator-arbitrator shall notify the parties that the arbitration phase will proceed, as appropriate.
2. Procedures for Arbitration Phase
  - a. During the arbitration phase, the parties will be allowed to submit to the mediator-arbitrator a concise written summary of the relevant issues involved in the appeal, notarized statements, and other additional documents. The parties must have provided the other party and the mediator-arbitrator with the written summary of relevant issues, any notarized statements from individuals who have knowledge about the issues on appeal, and other related documents concerning the appeal prior to the arbitration conference. The time for the exchange by the parties and submission to the mediator-arbitrator of the written summary of relevant issues, notarized statements, and other related documents will be determined by the mediator-arbitrator.
  - b. During the arbitration phase, the mediator-arbitrator will allow each party a maximum of two hours to present his appeal, with the covered employee presenting his case first. Either the party or one of his representatives shall be designated as the spokesperson during the conference. No testimony will be allowed and others in attendance will not be allowed to speak or ask questions during the presentation of information. The parties may use the designated time to present any oral arguments concerning the issues on appeal. The covered employee may reserve a portion of the two hours to reply to the agency's contentions. This reply is limited only to information presented orally by the agency and shall not exceed one-half of the total time for the presentation of information. In extenuating circumstances, the mediator-arbitrator may increase or decrease the time each party has to present his appeal at the conference during the arbitration phase.
  - c. The other party and his representatives may be present when a party presents his appeal during the arbitration phase.
  - d. Conformity to legal rules of evidence shall not be necessary during the arbitration phase.
  - e. At any time before the mediator-arbitrator makes a final arbitration decision, the mediation phase may be reopened at his initiative, or at his discretion upon request of a party.

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- f. The mediator-arbitrator shall transmit to both parties a final written decision based on all documents properly submitted by both parties and the oral arguments presented during the arbitration phase within 45 calendar days after the mediator-arbitrator initially meets with either or both parties. This 45-day period may be extended by the State Human Resources Director under extenuating circumstances. When the expiration of this 45-day period occurs during the seven day waiting period required under the Older Workers Benefit Protection Act before a written agreement becomes effective, the State Human Resources Director will extend the 45-day period one day for each day remaining in the seven day waiting period.
- g. As a result of this final written decision, either the covered employee or the agency may request reconsideration by the mediator-arbitrator within 30 calendar days from receipt of the decision.
- h. The mediator-arbitrator shall request assistance from the attorney for OHR in the preparation of his final written decision and his written response to a request for reconsideration.

### G. Confidentiality

- 1. The conferences with the parties are confidential and limited to the parties and their representatives, but other persons may attend with the permission of the parties and the mediator-arbitrator.
- 2. The mediator-arbitrator may not be compelled by subpoena or otherwise to divulge any records or discussions or to testify in regard to the mediation-arbitration in any adversary proceeding or judicial forum.
- 3. All records, reports, documents, discussions, and other information received by the mediator-arbitrator while serving in that capacity are confidential, except the documents which have been submitted by each party shall be the record during appellate review to the Administrative Law Court.

## 19-718.09 APPELLATE REVIEW OF ANY FINAL DECISION

Either party may seek appellate review to the Administrative Law Court from a final decision by the State Human Resources Director denying an appeal or by the State Employee Grievance Committee or mediator-arbitrator.

- A. A notice of appeal seeking appellate review to the Administrative Law Court must be initiated within 30 calendar days from receipt of the decision.
- B. A notice of appeal seeking appellate review of the final decision may be made by the covered employee to the Administrative Law Court as provided in Sections 1-23-380 (B) and 1-23-600 (D) of the South Carolina Code of Laws.
- C. Only after an agency submits a written request to OHR seeking approval of the Budget and Control Board may the agency file a notice of appeal seeking appellate review to the Administrative Law Court. However, the agency may perfect the appeal only upon approval of the Board.
- D. The covered employee or the agency who first files the notice of appeal seeking appellate review of a Committee decision is responsible for preparation of a transcript and paying the costs of preparation of a transcript of the hearing required for certification of the record to the Administrative Law Court.

- E. The record for appellate review of a decision made by a mediator-arbitrator shall be limited to the documents which have been submitted by each party and the final written decision of the mediator-arbitrator.
- F. The covered employee or the agency who first files the notice of appeal seeking appellate review of a final decision by (1) the State Human Resources Director denying an appeal; (2) the State Employee Grievance Committee; (3) a mediator-arbitrator, is responsible for any costs associated with providing the certification of record for the Administrative Law Court.
- G. Neither the Board nor OHR nor the State Human Resources Director nor the Committee nor the mediator-arbitrator may be named in the notice of appeal to the Administrative Law Court to be allowed to intervene to participate in the appeal for appropriate reasons including their interest in defending their policies.

**19-718.10 COMPUTATION OF BACK PAY**

- A. Reinstatement of pay resulting from a reversed disciplinary action shall be less any other related income, such as unemployment compensation, workers' compensation, State retirement benefits, and wages, received during the period of time in which the pay was deducted and shall be accomplished in the following manner:
  - 1. The covered employee shall submit to the agency a notarized statement of any wages earned during the interim period of disciplinary action;
  - 2. The agency shall submit a written request for the covered employee's reinstatement of pay and a statement of back pay due, less any other related income, such as unemployment compensation, workers' compensation, State retirement benefits, and wages, to the State Human Resources Director;
  - 3. Any unemployment compensation earned by the employee will be verified by OHR through the South Carolina Department of Employment and Workforce. The amount of unemployment compensation provided by the South Carolina Department of Employment and Workforce will be used in determining the final back pay amount;
  - 4. The computation of back pay must be in accordance with guidelines provided by the Office of the Comptroller General; and
  - 5. The State Human Resources Director must approve the amount of reinstatement pay due the employee. That approval is not subject to administrative appeal and will constitute the final administrative decision.
- B. The above procedure shall be followed in reversed disciplinary actions resulting from both agency internal grievance procedures as well as appeals at the State level.
- C. The intent of this regulation is only to make the employee whole as if the disciplinary action had not occurred.

**19-718.11 APPROVAL OF PERSONNEL SETTLEMENTS**

It is the policy of the Budget and Control Board that personnel settlement proposals be presented to the Board for approval as outlined in the following:

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- A. In all situations where a personnel settlement has not been negotiated or approved by the Office of the Attorney General under a plan approved by the Office of the Attorney General;
- B. In all human resources-related matters, after review and recommendation by the State Human Resources Director, excluding settlements which have been negotiated and approved by the Workers' Compensation Commission, South Carolina Department of Employment and Workforce, or South Carolina Human Affairs Commission; and
- C. In all other situations where specific approval of the Budget and Control Board would be necessary to disburse funds mentioned under the settlement proposal.
  - 1. All personnel settlement proposals shall contain such information as the Budget and Control Board or its designee specifies.
  - 2. The State Human Resources Director may review and approve any personnel settlement of \$10,000 or less.

## **19-719 SEPARATION FROM STATE SERVICE**

### **SCOPE AND PURPOSE**

This regulation governs how the State government employment relationship may end.

### **19-719.01 CONTINUOUS STATE SERVICE AND BREAK IN SERVICE**

#### **A. Continuous State Service**

Continuous State service is service with one or more agencies without a break in service.

#### **B. Break in Service**

An employee experiences a break in service when the employee:

- 1. Separates from State service and is paid for unused annual leave.

Exception - When an employee moves from a position in which the employee earns both annual and sick leave to a position in which the employee only earns sick leave. All earned sick leave shall be transferred in accordance with Regulation 19-710.05 A.

- 2. Moves from one State agency to another and is not employed with the receiving agency within 15 calendar days following the last day worked (or approved day of leave) at the transferring agency.

Exception - Under extenuating circumstances an agency head may approve an extension from 15 calendar days up to but not in excess of six months for an employee in a full-time equivalent (FTE) position to be employed in another FTE position within State government without having a break in service. The approval must be made prior to the employee receiving a lump sum payment for unused annual leave and within 15 days of the last day the employee is in pay status.

- 3. Remains on leave for a period of more than one calendar year.

Exceptions

- a. The employee is on a military tour of duty with reemployment rights protected under federal or State law.
  - b. The employee is participating in the Government Employees Interchange Program as provided in Regulation 19-714.
  - c. The employee is on disability leave without pay that has been extended by the Office of Human Resources (OHR).
  - d. The employee is an academic personnel at an institution of higher learning on sabbatical leave.
4. Separates from State service as a result of a reduction in force and is not recalled to the original position or reinstated with State government within 12 months of the effective date of the separation.
  5. Involuntarily separates from State service and the agency's decision is upheld by the State Employee Grievance Committee or by the courts.
  6. Moves from an FTE position to a temporary, temporary grant, or time-limited position. Exception - When an employee in an FTE position moves to a temporary, temporary grant, or time-limited position within 15 calendar days following the last day worked (or approved day of leave) during the employee's TERI program period, he does not experience a break in service.

**19-719.02 RESIGNATION**

- A. An employee may resign orally or in writing. Such notification of resignation should be accepted by the agency in the same manner as provided, whether written or oral, and an oral acceptance of a resignation should be generally confirmed in writing. Once an employee's resignation is accepted, it may not be withdrawn, cancelled, or amended without consent of the agency head or his designee.
- B. Resignations should be given to provide a minimum of two weeks notice.
- C. Any employee who voluntarily submits a written resignation may not grieve or appeal under the State Employee Grievance Procedure Act.

**19-719.03 TERMINATION**

For purposes of the State Employee Grievance Procedure Act, termination is the action taken by an agency against an employee to separate the employee involuntarily from employment.

**19-719.04 REDUCTION IN FORCE**

- A. Statements of Policy
  1. The Office of Human Resources shall develop a reduction in force model policy to assist an agency in its policy development. The Office of Human Resources must review and approve each agency's reduction in force policy.
  2. Each agency shall develop a reduction in force policy. This requirement shall not apply to academic personnel. However, each institution of higher learning or medical institution of education and research shall develop a policy outlining the criteria for a reduction in force for these employees.

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3. Technical colleges are required to have a reduction in force policy.
4. Employees on authorized leave are eligible to compete in a reduction in force as if they are not on leave.
5. When a covered employee is assigned lower level responsibilities or demoted as a result of a reduction in force implemented due to budgetary reductions, the employee's salary may be reduced on the effective date of the reduction in force. The agency head or his designee, at his discretion, may reduce the employee's salary to a salary either between 0%-15% below the employee's current salary or between the employee's current salary and the midpoint of the lower pay band. In exercising this discretion, the agency head or his designee may use the option which results in the greatest cost savings.

(Note: Regulation 19-719.04 A. 5. only applies to decreases in salary as a result of a reduction in force implemented due to budgetary reductions and is an exception to salary decreases when a covered employee is assigned lower level responsibilities or demoted as listed in Regulation 19-705 and 19-706.)

### B. Reduction in Force Plan

1. Each agency shall submit a reduction in force plan to OHR for review and approval for procedural correctness prior to its implementation.
2. A reduction in force plan must include:
  - a. A reason for the layoff as defined by the agency. These circumstances shall be either agency reorganization, work shortage, loss of funding, or outsourcing/privatization. If the reason for the reduction in force is that the agency can no longer meet its personal services budget, OHR will forward a copy of the plan to the Office of State Budget for concurrence on the budgetary issue prior to final approval.
  - b. The competitive area(s) in which the reduction in force will apply. Competitive area(s) shall be determined by the agency according to critical needs. Any covered employee affected by a reduction in force shall have bumping rights within a competitive area(s).
  - c. The competitive group(s) within the competitive area(s) as defined by the agency including any employees in specified competitive area(s).
  - d. The proposed list of employees to be affected by the reduction in force which includes:
    - (1) The age, race, and sex of all employees in the competitive group(s); and
    - (2) A preliminary list of employees in each group in retention point order.
  - e. The efforts that will be made to assist laid off employees to find other employment, including notice to OHR.
  - f. A current organizational chart showing the competitive area(s) and competitive group(s).
  - g. Justification of the use of any retention of necessary qualifications as provided in the agency's reduction in force policy.

**3. Implementation**

After a reduction in force plan is reviewed and approved by OHR for procedural correctness and before it becomes effective, an agency representative shall inform affected employees of the following:

- a. The reason for the reduction in force;
- b. The competitive area(s) and competitive group(s);
- c. The effects of the reduction in force upon State benefits;
- d. The assistance offered by OHR;
- e. The employee's recall rights; and
- f. The method of notification should a job become available.

**4. Reduction in Force Rights**

- a. Any covered employee affected by a reduction in force shall retain covered status and recall rights for a period of one year from the date of separation.
- b. Employees who are affected by the reduction in force shall be recalled in inverse order based on retention points should a position become available within the competitive area.
- c. A covered employee who is separated due to a reduction in force shall retain continuous service if the employee is reinstated within one year from the date of separation.
- d. An employee who is separated by an agency by a reduction in force and is subsequently reinstated within one year shall have his sick leave restored and shall be given the option of buying back all, some, or none of his annual leave at the rate at which it was paid out.

**5. Grievance Rights**

A covered employee who is affected by a reduction in force may grieve or appeal the reduction in force under the State Employee Grievance Procedure Act if the appeal is based on inconsistent or improper application of a reduction in force policy or plan.

**19-719.05 EXIT INTERVIEWS**

- A. Each agency should establish a procedure for obtaining separation information from each employee who separates from State service. This procedure should include an exit interview to reflect the specific reasons for the employee's separation. A reasonable effort should be made to interview the employee to obtain the information.
- B. Each agency should maintain and summarize a general file on all exit interviews for review by management.

**19-719.06 ANNUAL AND SICK LEAVE UPON SEPARATION**

- A. Regulation 19-709.05 explains the applicable annual leave provisions when an employee separates from State service.

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- B. Regulation 19-710.06 explains the applicable sick leave provisions when an employee separates from State service.

## **19-720 RECORDKEEPING**

### **SCOPE AND PURPOSE**

This regulation governs the recordkeeping requirements for human resources programs.

### **19-720.01 STATEMENT OF POLICY**

Each agency shall establish and maintain all records required by State law or the Office of Human Resources (OHR) concerning human resources programs.

### **19-720.02 EMPLOYEE RECORDS**

- A. Each agency shall establish and maintain an official human resources file for each employee which shall include, but not necessarily be limited to, the following:

1. Employment application;
2. All human resources actions reflecting the employee's work history with the agency;
3. Documentation directly related to the employee's work record; and
4. All performance evaluations.

*(Refer to Regulation 19-707.02 J. 3.)*

- B. An employee's official human resources file shall be available for the employee's review upon request.

### **19-720.03 RECORDS RELEASE**

- A. In response to requests for information from human resources records, agencies may provide, pursuant to the Freedom of Information Act, an employee's name, date of employment, title, sex, and race. The determination to disclose other types of information should be made on a case by case basis. Requests for salary information should be answered in accordance with the Freedom of Information Act. *(Refer to Regulation 19-703.05.)*

- B. In responding to requests for information concerning current or former employees by prospective employers under § 41-1-65 of the South Carolina Code of Laws, agencies may provide information as follows:

1. Agencies responding to oral requests for information may disclose an employee's or former employee's dates of employment, pay level, and wage history.
2. Agencies responding to written requests may disclose the following information to which an employee or former employee may have access:
  - a. Written employee evaluations;

- b. Official human resources notices that formally record the reasons for separation;
  - c. Whether the employee was voluntarily or involuntarily released from service and the reason for the separation; and
  - d. Information about job performance.
- 3. Agencies shall not knowingly or recklessly release or disclose false information.
  - 4. Responses to requests under § 41-1-65 of the South Carolina Code of Laws should be considered in conjunction with the Freedom of Information Act.

**19-720.04 CENTRAL HUMAN RESOURCES DATA SYSTEM**

Refer to Regulation 19-701.05.

Document No. 4125  
**STATE BOARD OF EDUCATION**  
 CHAPTER 43  
 Statutory Authority: 20 U.S.C. § 1400 et seq. (2004)

43–243. Special Education, Education of Students with Disabilities

**Synopsis:**

The State Board of Education proposes to amend R.43-243 to align state rules, regulations, and policies relating to the education of children with disabilities to the purposes and requirements of the Individuals with Disabilities Education Improvement Act of 2004 regulation 34 CFR Parts 300 and 301 as amended August 28, 2009. This regulation will amend current regulation 43-243.

**Instructions:** The following sections of Regulation 43-243 are modified as provided below. All other items and sections remain unchanged.

**Text:**

43-243. Special Education, Education of Students with Disabilities.

Section I(B)(6):

- 6. Consent. Consent means that--
  - a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;
  - b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
  - c)(1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.
    - (2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).
    - (3) If the parent revokes consent in writing for their child’s receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend

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the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

### Section II(C)(2):

#### 2. Residential and alternative residence placements.

a) If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.

b) If a child with a disability is placed by a public entity for therapeutic reasons in a public or private residential program, the responsibility for providing a FAPE to that child shall rest with the LEA wherein the residence is located. This includes children with disabilities who reside in alternative residences (such as foster homes, group homes, orphanages, residential treatment facilities, state-operated healthcare facilities and state-operated facilities for the treatment of mental illness or chemical dependence) that are located within the LEA.

This does not apply to children residing in hospitals, emergency shelters, special schools, child care institutions, or private healthcare settings that are funded through other provisions and acts.

### Section II(O)(8):

8. States' sovereign immunity and positive efforts to employ and advance qualified individuals with disabilities.

#### a) States' sovereign immunity.

(1) A State that accepts funds under this part waives its immunity this part waives its immunity under the 11<sup>th</sup> amendment of the Constitution of the United States from suit in Federal court for a violation of this part.

(2) In a suit against a State for a violation of this part, remedies (including remedies both at law and in equity) are available for such a violation in the suit against a public entity other than a State.

(3) Paragraphs a)(1) and a)(2) of this section apply with respect to violations that occur in whole or part after the date of enactment of the Education of the Handicapped Act Amendments of 1990.

b) Positive efforts to employ and advance qualified individuals with disabilities. Each recipient of assistance under Part B of the Act must make positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted under Part B of the Act.

### Section III(17): Old Section III(17)-(24) should be renumbered (18)-(25)

17. Fiscal Sanctions. If the SCDE finds that a LEA, special school, or other agency, herein referred to as an applicant, with the responsibility under state law for the provision of a FAPE to students with disabilities is failing to comply with any requirement described under Part B of the IDEA, the applicable federal or state regulations, or state policies and procedures related to the requirements of the IDEA, the SCDE may impose sanctions, including the reduction, withholding, or recovery of payments made relative to the IDEA grant administered by the SCDE. In accordance with Part B of the IDEA and the Education Division General Administrative Regulations (EDGAR) Title 34, Code of Federal Regulations §§ 75 and 76, the SCDE shall provide reasonable notice and an opportunity for a hearing prior to taking any final action regarding the reduction, withholding, or recovery of payments to the applicant.

a) Hearing Issues. The SCDE shall provide the applicant with notification of the right to a hearing and the procedures for a hearing if the SCDE determines:

(1) An applicant is not eligible for assistance under Part B of the IDEA;

(2) An applicant, for three or more consecutive years, needs intervention or substantial intervention, in implementing the requirements of Part B of the IDEA;

(3) An applicant is unable or unwilling to consolidate with other applicants or agencies in accordance with the IDEA;

(4) An applicant failed to submit an accurate and unduplicated count of the number of students with disabilities receiving special education and related services, or in the case of children enrolled by their parents in private or home-school programs, failed to accurately report the count of students eligible to receive special education and related services;

(5) An applicant is not meeting the requirements of Part B of the IDEA and the provision of a FAPE to students with disabilities and the applicant has not, or the SCDE has reason to believe the applicant cannot, correct the problem within one year; or

(6) An applicant is not meeting any of the other federal or state requirements relative to Part B of the IDEA that allow the reduction, withholding, or recovery of funds.

b) Hearing Appeals Panel. When a school district or public agency requests a hearing, in writing, the state superintendent of education (Superintendent) shall select a three-member hearing panel to conduct the proceeding. The hearing panel shall consist of at least two of the SCDE's deputy superintendents or their designees, and one additional individual designated by the superintendent.

c) Hearing Procedures.

(1) An applicant shall request a hearing by notifying the Superintendent by certified mail of its decision to appeal a decision as set forth in these procedures.

(2) The applicant shall include the nature of the request for the hearing, including the reasons for any disagreement with the determinations by the SCDE, and the facts on which the request for the hearing is based.

(3) The applicant shall request a hearing within thirty calendar days of the date of the SCDE's notification of the intent to impose the specified sanction. For purposes of these procedures, the date of the notice by the SCDE is the date the notice is received by the applicant.

(4) The hearing shall be scheduled before a hearing panel within thirty calendar days from the receipt of the request.

(5) The applicant shall receive written notice at least ten days prior to the hearing date. The notice shall include the date, location, and time of the hearing.

(6) The applicant and the SCDE may present evidence in writing and through witnesses and may be represented by counsel at the hearing. The parties shall exchange the names of proposed witnesses no later than five days prior to the hearing. The parties shall have a minimum of six copies available of written materials that will be used as evidence during the hearing.

(7) The hearing panel may determine the length and order of the presentations by the parties and determine the course of the proceedings. The hearing panel shall take all steps necessary to conduct a fair and impartial proceeding, avoid delays, maintain order, and comply with the additional procedures set forth in the SCDE *Policies and Procedures for Programs for Students with Disabilities*.

(8) The hearing panel shall make a formal recommendation to the Superintendent within five calendar days following the hearing.

(9) If the applicant or its authorized representative fails to appear at the designated time, location, and date of the hearing, the appeal shall be considered closed and the hearing process terminated.

(10) If the SCDE determines that its proposed action is contrary to federal or state statutes, federal or state regulations, or applicable state policies and procedures related to the requirements of the IDEA, the SCDE shall review its proposal and determine, what if any, alternative action is warranted.

(11) The Superintendent shall issue a written decision within ten days of the date of the conclusion of the hearing. The written decision shall include the findings of fact and reasons for the decision.

(12) The Superintendent's decision is final unless the applicant disagrees with the decision and files an appeal of the decision with a court of competent jurisdiction. If the SCDE does not receive notice of an intent to appeal the decision, within thirty calendar days of the issuance of the written decision the SCDE shall implement the proposed action in whole or in part until the SCDE is satisfied that the applicant is complying with the applicable federal and state requirements.

(13) The SCDE shall keep a record of the proceedings. Any party, at its expense, may obtain a copy of the record of the proceedings.

d) Decision. The Superintendent shall issue a written decision within ten days of the date of the conclusion of the hearing by transmitting the written decision to the superintendent or other authorized representative of the applicant.

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e) Public attention. Any applicant that receives notice that the SCDE is proposing to take or is taking an enforcement action pursuant to this section, must by means of public notice, take such actions as may be necessary to notify the public of the pendency of the action, including, at a minimum, posting the notice on the applicant's web site and distributing notice of the proposed act to the media and through public agencies.

Section IV(A)(1)(b) and (d):

b) Parental consent for services.

(1) A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.

(2) The public agency must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.

(3) If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, the public agency:

(i) May not use the procedures in the Procedural Safeguards Due Process Procedures for Parents and Children section V (including the mediation procedures under Sec. 300.506) and the due process procedures under Sec. Sec. 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;

(ii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with the special education and related services for which the parent refuses or fails to provide consent; and

(iii) Is not required to convene an IEP team meeting or develop an IEP under Sec. Sec. 300.320 and 300.324 for the child.

(4) If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency:

(i) May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with Sec. 300.503 before ceasing the provision of special education and related services;

(ii) May not use the procedures in the Procedural Safeguards section (including the mediation procedures under Sec. 300.506 or the due process procedures under Sec. Sec. 300.507 through 300.516) in order to obtain agreement or a ruling that he services may be provided to the child;

(iii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and

(iv) Is not required to convene an IEP team meeting or develop an IEP under Sec. Sec. 300.320 and 300.324 for the child for further provision of special education and related services.

d) Other consent requirements.

(1) Parental consent is not required before--

(i) Reviewing existing data as part of an evaluation or a reevaluation; or

(ii) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

(2) A public agency may not use a parent's refusal to consent to one service or activity under paragraphs (a), (b), and (c) of this section to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this part.

(3)(i) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures (described in paragraphs (a)(3) and (c)(1) of this section); and

(ii) The public agency is not required to consider the child as eligible for services under Secs. 300.132 through 300.144.

(4) To meet the reasonable efforts requirement in paragraphs (a)(1)(iii), (a)(2)(i), (b)(2), and (c)(2)(i) of this section, the public agency must document its attempts to obtain parental consent using the procedures in Sec. 300.322(d).

Section V(13)(a):

a) General. Any party to a hearing conducted pursuant to Secs. 300.507 through 300.513 or Secs. 300.530 through 300.534, or an appeal conducted pursuant to Sec. 300.514, has the right to--

- (1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities, except that whether parties have the right to be represented by nonattorneys at due process hearings is determined under State law;
- (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;
- (3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
- (4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and
- (5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

Section VI(A)(1)(a) and (e):

a) The State must--

- (1) Monitor the implementation of this part;
- (2) Make the determinations annually about the performance of each LEA using the categories in Sec. 300.600(b)(1);
- (3) Enforce this part, consistent with Sec. 300.604, using appropriate enforcement mechanisms, which must include, if applicable, the enforcement mechanisms identified in Sec. 300.604(a)(1) (technical assistance), (a)(3) (conditions on funding of an LEA), (b)(2)(i) (a corrective action plan or improvement plan), (b)(2)(v) (withholding funds in whole or in part, by the SEA), and (c)(2) (withholding funds, in whole or in part, by the SEA);
- (4) Report annually on the performance of the State and of each LEA under this part, as provided in Sec. 300.602(b)(1)(i)(A) and (b)(2).

e) In exercising its monitoring responsibilities under paragraph d) of this section, the State must ensure that when it identifies noncompliance with the requirements of this part by LEAs, the noncompliance is corrected as soon as possible, but in no case later than one year after the State's identification of the noncompliance.

Section VI(A)(3)(b)(1):

(1) Public report.

(i) Subject to paragraph (b)(1)(ii) of this section, the State must--

(A) Report annually to the public on the performance of each LEA located in the State on the targets in the State's performance plan as soon as practicable but no later than 120 days following the State's submission of its annual performance report to the Secretary under paragraph (b)(2) of this section; and

(B) Make each of the following items available through public means: the State's performance plan, under Sec. 300.601(a); annual performance reports, under paragraph (b)(2) of this section; and the State's annual reports on the performance of each LEA located in the State, under paragraph (b)(1)(i)(A) of this section. In doing so, the State must, at a minimum, post the plan and reports on the SEA's web site, and distribute the plan and reports to the media and through public agencies.

(ii) If the State, in meeting the requirements of paragraph (b)(1)(i) of this section, collects performance data through State monitoring or sampling, the State must include in its report under paragraph (b)(1)(i)(A) of this section the most recently available performance data on each LEA, and the date the data were obtained.

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### Section VI(A)(7):

7. Public attention. Whenever a State receives notice that the Secretary is proposing to take or is taking an enforcement action pursuant to Sec. 300.604, the State must, by means of a public notice, take such actions as may be necessary to notify the public within the State of the pendency of an action pursuant to Sec. 300.604, including, at a minimum, by posting the notice on the SEA's web site and distributing the notice to the media and through public agencies.

### Section VI(A)(11)-(28) becomes Section VI(B)(1)-(18):

#### B. Confidentiality of Information

1. Confidentiality. The Secretary takes appropriate action, in accordance with section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by SEAs and LEAs pursuant to Part B of the Act, and consistent with Secs. 300.611 through 300.627.

2. Definitions. As used in Secs. 300.611 through 300.625--

a) Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

b) Education records means the type of records covered under the definition of "education records" in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).

c) Participating agency means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act.

3. Notice to parents.

a) The SEA must give notice that is adequate to fully inform parents about the requirements of Sec. 300.123, including--

(1) A description of the extent that the notice is given in the native languages of the various population groups in the State;

(2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

(3) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

(4) A description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 CFR part 99.

b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.

4. Access rights.

a) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to Sec. 300.507 or Secs. 300.530 through 300.532, or resolution session pursuant to Sec. 300.510, and in no case more than 45 days after the request has been made.

b) The right to inspect and review education records under this section includes--

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

5. Record of access. Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the Act (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

6. Records on more than one child. If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

7. List of types and locations of information. Each participating agency must provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

8. Fees.

a) Each participating agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

b) A participating agency may not charge a fee to search for or to retrieve information under this part.

9. Amendment of records at parent's request.

a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.

b) The agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

c) If the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under Sec. 300.619.

10. Opportunity for a hearing. The agency must, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

11. Result of hearing.

a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and so inform the parent in writing.

b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform the parent of the parent's right to place in the records the agency maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

c) Any explanation placed in the records of the child under this section must--

(1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and

(2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

12. Hearing procedures. A hearing held under Sec. 300.619 must be conducted according to the procedures in 34 CFR 99.22.

13. Consent.

a) Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with paragraph (b)(1) of this section, unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 CFR part 99.

b)(1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this part.

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(2) Parental consent, or the consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with Sec. 300.321(b)(3).

(3) If a child is enrolled, or is going to enroll in a private school that is not located in the LEA of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the LEA where the private school is located and officials in the LEA of the parent's residence.

### 14. Safeguards.

a) Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

b) One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.

c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under Sec. 300.123 and 34 CFR part 99.

d) Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

### 15. Destruction of information.

a) The public agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.

b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

### 16. Children's rights.

a) The SEA must have in effect policies and procedures regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability.

b) Under the regulations for FERPA in 34 CFR 99.5(a), the rights of parents regarding education records are transferred to the student at age 18.

c) If the rights accorded to parents under Part B of the Act are transferred to a student who reaches the age of majority, consistent with Sec. 300.520, the rights regarding educational records in Secs. 300.613 through 300.624 must also be transferred to the student. However, the public agency must provide any notice required under section 615 of the Act to the student and the parents.

17. Enforcement. The SEA must have in effect the policies and procedures, including sanctions that the State uses, to ensure that its policies and procedures consistent with Secs. 300.611 through 300.625 are followed and that the requirements of the Act and the regulations in this part are met. The sanctions are described in Section III. Local Education Eligibility.

18. Department use of personally identifiable information. If the Department or its authorized representatives collect any personally identifiable information regarding children with disabilities that is not subject to the Privacy Act of 1974, 5 U.S.C. 552a, the Secretary applies the requirements of 5 U.S.C. 552a(b)(1) and (b)(2), 552a(b)(4) through (b)(11); 552a(c) through 552a(e)(3)(B); 552a(e)(3)(D); 552a(e)(5) through (e)(10); 552a(h); 552a(m); and 552a(n); and the regulations implementing those provisions in 34 CFR part 5b.

## Section VII(A)(6):

### 6. Subgrants to LEAs.

a) Subgrants required. Each State that receives a grant under section 611 of the Act for any fiscal year must distribute any funds the State does not reserve under Sec. 300.704 to LEAs (including public charter schools that operate as LEAs) in the State that have established their eligibility under section 613 of the Act for use in accordance with Part B of the Act. Effective funds that become available on July 1, 2009, each State must distribute funds to eligible LEAs, including public charter schools that operate as LEAs, even if the LEA is not serving any children with disabilities.

b) Allocations to LEAs. For each fiscal year for which funds are allocated to States under Sec. 300.703, each State shall allocate funds as follows:

(1) Base payments. The State first must award each LEA described in paragraph (a) of this section the amount the LEA would have received under section 611 of the Act for fiscal year 1999, if the State had distributed 75 percent of its grant for that year under section 611(d) of the Act, as that section was then in effect.

(2) Base payment adjustments. For any fiscal year after 1999--

(i) If a new LEA is created, the State must divide the base allocation determined under paragraph (b)(1) of this section for the LEAs that would have been responsible for serving children with disabilities now being served by the new LEA, among the new LEA and affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 if a State has had its payment reduced under Sec. 300.703(b), currently provided special education by each of the LEAs;

(ii) If one or more LEAs are combined into a single new LEA, the State must combine the base allocations of the merged LEAs; and

(iii) If, for two or more LEAs, geographic boundaries or administrative responsibility for providing services to children with disabilities ages 3 through 21 change, the base allocations of affected LEAs must be redistributed among affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 if a State has had its payment reduced under Sec. 300.703(b), currently provided special education by each affected LEA; and

(iv) If an LEA received a base payment of zero in its first year of operation, the SEA must adjust the base payment for the first fiscal year after the first annual child count in which the LEA reports that it is serving any children with disabilities. The State must divide the base allocation determined under paragraph (b)(1) of this section for the LEAs that would have been responsible for serving children with disabilities now being served by the LEA, among the LEA and affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 concurrently provided special education by each of the LEAs. This requirement takes effect with funds that become available on July 1, 2009.

(3) Allocation of remaining funds. After making allocations under paragraph (b)(1) of this section, as adjusted by paragraph (b)(2) of this section, the State must--

(i) Allocate 85 percent of any remaining funds to those LEAs on the basis of the relative numbers of children enrolled in public and private elementary schools and secondary schools within the LEA's jurisdiction; and

(ii) Allocate 15 percent of those remaining funds to those LEAs in accordance with their relative numbers of children living in poverty, as determined by the SEA.

c) Reallocation of funds.

(1) If an SEA determines that an LEA is adequately providing FAPE to all children with disabilities residing in the area served by that agency with State and local funds, the SEA may reallocate any portion of the funds under this part that are not needed by that LEA to provide FAPE to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those other LEAs. The SEA may also retain those funds to use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to Sec. 300.704.

(2) After an SEA distributes funds under this part to an eligible LEA that is not serving any children with disabilities, as provided in paragraph (a) of this section, the SEA must determine, within a reasonable period of time prior to the end of the carryover period in 34 CFR 76.709, whether the LEA has obligated the funds. The SEA may reallocate any of those funds not obligated by the LEA to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those other LEAs. The SEA may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to Sec. 300.704.

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### Section VIII(12)-(14):

12. Subgrants to LEAs. Each State that receives a grant under section 619 of the Act for any fiscal year must distribute all of the grant funds that the State does not reserve under Sec. 300.812 to LEAs (including public charter schools that operate as LEAs) in the State that have established their eligibility under section 613 of the Act. Effective with funds that become available on July 1, 2009, each State must distribute funds to eligible LEAs that are responsible for providing education to children aged three through five years, including public charter schools that operate as LEAs, even if the LEA is not serving any preschool children with disabilities.

#### 13. Allocations to LEAs.

a) Base payments. The State must first award each LEA described in Sec. 300.815 the amount that agency would have received under section 619 of the Act for fiscal year 1997 if the State had distributed 75 percent of its grant for that year under section 619(c)(3), as such section was then in effect.

b) Base payment adjustments. For fiscal year 1998 and beyond--

(1) If a new LEA is created, the State must divide the base allocation determined under paragraph (a) of this section for the LEAs that would have been responsible for serving children with disabilities now being served by the new LEA, among the new LEA and affected LEAs based on the relative numbers of children with disabilities ages three through five currently provided special education by each of the LEAs;

(2) If one or more LEAs are combined into a single new LEA, the State must combine the base allocations of the merged LEAs;

(3) If for two or more LEAs, geographic boundaries or administrative responsibility for providing services to children with disabilities ages three through five changes, the base allocations of affected LEAs must be redistributed among affected LEAs based on the relative numbers of children with disabilities ages three through five currently provided special education by each affected LEA; and

(4) If an LEA received a base payment of zero in its first year of operation, the SEA must adjust the base payment for the first fiscal year after the first annual child count in which the LEA reports that it is serving any children with disabilities aged three through five years. The State must divide the base allocation determined under paragraph (a) of this section for the LEAs that would have been responsible for serving children with disabilities aged three through five years now being served by the LEA, among the LEA and affected LEAs based on the relative numbers of children with disabilities aged three through five years currently provided special education by each of the LEAs. This requirement takes effect with funds that become available on July 1, 2009.

c) Allocation of remaining funds. After making allocations under paragraph (a) of this section, the State must--

(1) Allocate 85 percent of any remaining funds to those LEAs on the basis of the relative numbers of children enrolled in public and private elementary schools and secondary schools within the LEA's jurisdiction; and

(2) Allocate 15 percent of those remaining funds to those LEAs in accordance with their relative numbers of children living in poverty, as determined by the SEA.

d) Use of best data. For the purpose of making grants under this section, States must apply on a uniform basis across all LEAs the best data that are available to them on the numbers of children enrolled in public and private elementary and secondary schools and the numbers of children living in poverty.

#### 14. Reallocation of LEA funds.

(a) If an SEA determines that an LEA is adequately providing FAPE to all children with disabilities aged three through five residing in the area served by the LEA with State and local funds, the SEA may reallocate any portion of the funds under section 619 of the Act that are not needed by that LEA to provide FAPE to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities aged three through five residing in the areas served by those other LEAs. The SEA may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to Sec. 300.812.

(b) After an SEA distributes section 619 funds to an eligible LEA that is not serving any children with disabilities aged three through five, as provided in Sec. 300.815, the SEA must determine, within a reasonable period of time prior to the end of the carryover period in 34 CFR 76.709, whether the LEA has obligated the funds. The SEA may reallocate any of those funds not obligated by the LEA to other LEAs in the State that are

not adequately providing special education and related services to all children with disabilities aged three through five years residing in the areas served by those other LEAs. The SEA may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to Sec. 300.812.

Document No. 4070

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

Statutory Authority: 1976 Code Sections 48-1-10 et seq.

61-62. Air Pollution Control Regulations and Standards

**Synopsis:**

On May 18, 2005, the United States Environmental Protection Agency (EPA) published a final rule in the *Federal Register* titled, *Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units* (70 FR 28606), also referred to as the “Clean Air Mercury Rule” (CAMR). This final rule established standards of performance for mercury for new and existing coal-fired electric utility steam generating units (EGUs), as defined in the Clean Air Act (CAA) section 111. This final rule became effective July 18, 2005. The South Carolina CAMR became state-effective upon the publication of a Notice of Final Regulation in the South Carolina *State Register* (*State Register*) on June 22, 2007 (Document No. 3083). The final package for the State CAMR was submitted to the EPA on August 16, 2007, for approval.

On February 8, 2008, the United States Court of Appeals for the District of Columbia Circuit (Court of Appeals) vacated the CAMR (Case No. 05-1097). The EPA filed a petition for a rehearing by the full Court of Appeals, but the petition was denied. The EPA has received two extensions to appeal the vacatur. On October 17, 2008, the U.S. Department of Justice filed an appeal with the U.S. Supreme Court requesting that the court overturn the Court of Appeals vacatur of the CAMR. On February 6, 2009, the EPA motioned to dismiss its case and remove the petition currently pending before the Supreme Court. The Supreme Court denied the remaining industry request to review the Court of Appeals mandate on February 23, 2009.

On May 16, 2003, the EPA published a final rule in the *Federal Register* titled, *National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing; and National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing; Final Rule* (68 FR 26690), establishing National Emission Standards for Hazardous Air Pollutants (NESHAP) that required major sources of those types to apply maximum achievable control technology (MACT). These subparts (40 CFR 63, subparts JJJJJ and KKKKK) are also known as the “Brick MACT” and “Clay MACT” respectively. This final rule became effective May 16, 2003, and was incorporated by reference in Regulation 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*, by a Notice of Final Regulation published in the *State Register* (Document No. 2913) on September 24, 2004. On March 13, 2007, the Court of Appeals vacated this rule (Case No. 03-1202). The final mandate for this case was issued on June 18, 2007.

On September 13, 2004, the EPA published a final rule in the *Federal Register* titled, *National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters; Final Rule* (69 FR 55218), establishing NESHAP that required major sources of those types to apply MACT. This subpart (40 CFR 63, subpart DDDDD) is also known as the “Boiler MACT.” This final rule became effective November 12, 2004, and was incorporated by reference in R. 61-62.63, by a Notice of Final Regulation published in the *State Register* (Document No. 2980) on August 26, 2005. On June 8, 2007, the Court of Appeals vacated this rule (Case No. 04-1385). The final mandate for this case was issued on July 30, 2007.

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The South Carolina Department of Health and Environmental Control (Department or DHEC) has amended R. 61-62, *Air Pollution Control Regulations and Standards*, by removing the aforementioned provisions of the State CAMR in R. 61-62.60, *South Carolina Designated Facility Plan and New Source Performance Standards*, and R. 61-62.72, *Acid Rain*. The Department has also amended R. 61-62.63, by removing all the provisions of the aforementioned rules published in the *Federal Register* May 16, 2003, and September 13, 2004.

A Notice of Drafting for these amendments was published in the State Register on November 28, 2008.

### Discussion of Revisions:

#### SECTION CITATION/EXPLANATION OF CHANGE:

R. 61-62.60:

Subpart A has been revised to remove previous amendments that incorporated by reference Federal amendments published in 70 FR 28606.

R. 61-62.60:

Subpart B has been revised to remove previous amendments that incorporated by reference Federal amendments published in 70 FR 28606, 71 FR 33388, and 72 FR 59190.

R. 61-62.60:

Subpart Da has been revised to remove previous amendments that incorporated by reference Federal amendments published in 70 FR 28606, 70 FR 51266, and 71 FR 33388.

R. 61-62.60:

Subpart Db has been revised to remove previous amendments that incorporated by reference Federal amendments published in 71 FR 33388.

R. 61-62.60:

Remove and reserve Subpart HHHH.

R. 61-62.63:

Remove and reserve Subpart DDDDD.

R. 61-62.63:

Remove and reserve Subpart JJJJ.

R. 61-62.63:

Remove and reserve Subpart KKKKK.

R. 61-62.72:

Subpart A has been amended to remove previous amendments that incorporated by reference Federal amendments published in 70 FR 28606.

#### Instructions:

Amend Regulation 61-62, *Air Pollution Control Regulations and Standards*, pursuant to each individual instruction provided below with the text of the amendments.

**Text:**

*Regulation 61-62.60, Subpart A shall be amended as follows:*

**Subpart A - “General Provisions”**

The provisions of Title 40 CFR Part 60, subpart A, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

<b>40 CFR Part 60 subpart A</b>			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 36	December 23, 1971	[36 FR 24877]
Revision	Vol. 38	October 15, 1973	[38 FR 28565]
Revision	Vol. 39	March 8, 1974	[39 FR 9314]
Revision	Vol. 39	November 12, 1974	[39 FR 39873]
Revision	Vol. 40	April 25, 1975	[40 FR 18169]
Revision	Vol. 40	October 6, 1975	[40 FR 46254]
Revision	Vol. 40	November 17, 1975	[40 FR 53346]
Revision	Vol. 40	December 16, 1975	[40 FR 58418]
Revision	Vol. 40	December 22, 1975	[40 FR 59205]
Revision	Vol. 41	August 20, 1976	[41 FR 35185]
Revision	Vol. 42	July 19, 1977	[42 FR 37000]
Revision	Vol. 42	July 27, 1977	[42 FR 38178]
Revision	Vol. 42	November 1, 1977	[42 FR 57126]
Revision	Vol. 43	March 3, 1978	[43 FR 8800]
Revision	Vol. 43	August 3, 1978	[43 FR 34347]
Revision	Vol. 44	June 11, 1979	[44 FR 33612]
Revision	Vol. 44	September 25, 1979	[44 FR 55173]
Revision	Vol. 45	January 23, 1980	[45 FR 5617]
Revision	Vol. 45	April 4, 1980	[45 FR 23379]
Revision	Vol. 45	December 24, 1980	[45 FR 85415]
Revision	Vol. 47	January 8, 1982	[47 FR 951]
Revision	Vol. 47	July 23, 1982	[47 FR 31876]
Revision	Vol. 48	March 30, 1983	[48 FR 13326]
Revision	Vol. 48	May 25, 1983	[48 FR 23610]
Revision	Vol. 48	July 20, 1983	[48 FR 32986]
Revision	Vol. 48	October 18, 1983	[48 FR 48335]
Revision	Vol. 50	December 27, 1985	[50 FR 53113]
Revision	Vol. 51	January 15, 1986	[51 FR 1790]
Revision	Vol. 51	January 21, 1986	[51 FR 2701]
Revision	Vol. 51	November 25, 1986	[51 FR 42796]
Revision	Vol. 52	March 26, 1987	[52 FR 9781, 9782]
Revision	Vol. 52	April 8, 1987	[52 FR 11428]
Revision	Vol. 52	May 11, 1987	[52 FR 17555]
Revision	Vol. 52	June 4, 1987	[52 FR 21007]
Revision	Vol. 54	February 14, 1989	[54 FR 6662]
Revision	Vol. 54	May 17, 1989	[54 FR 21344]
Revision	Vol. 55	December 13, 1990	[55 FR 51382]
Revision	Vol. 57	July 21, 1992	[57 FR 32338, 32339]
Revision	Vol. 59	March 16, 1994	[59 FR 12427, 12428]

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<b>40 CFR Part 60 subpart A</b>			
Federal Register Citation	Volume	Date	Notice
Revision	Vol. 59	September 15, 1994	[59 FR 47265]
Revision	Vol. 61	March 12, 1996	[61 FR 9919]
Revision	Vol. 62	February 24, 1997	[62 FR 8328]
Revision	Vol. 62	September 15, 1997	[62 FR 48348]
Revision	Vol. 63	May 4, 1998	[63 FR 24444]
Revision	Vol. 64	February 12, 1999	[64 FR 7463]
Revision	Vol. 65	August 10, 2000	[65 FR 48914]
Revision	Vol. 65	October 17, 2000	[65 FR 61744]
Revision	Vol. 65	December 6, 2000	[65 FR 76350, 76378]
Revision	Vol. 65	December 14, 2000	[65 FR 78268]
Revision	Vol. 66	February 6, 2001	[66 FR 9034]
Revision	Vol. 67	June 28, 2002	[67 FR 43550]
Revision	Vol. 68	April 14, 2003	[68 FR 17990]
Revision	Vol. 68	May 28, 2003	[68 FR 31611]
Revision	Vol. 69	July 8, 2004	[69 FR 41346]
Revision	Vol. 70	December 16, 2005	[70 FR 74870]
Revision	Vol. 71	June 1, 2006	[71 FR 31100]
Revision	Vol. 71	July 6, 2006	[71 FR 38482]

*Regulation 61-62.60, Subpart B shall be amended as follows:*

**Subpart B - “Adoption and Submittal of State Plans for Designated Facilities”**

The provisions of Title 40 CFR Part 60, subpart B as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

<b>40 CFR Part 60 subpart B</b>			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 40	November 17, 1975	[40 FR 53346]
Revision	Vol. 44	November 9, 1979	[44 FR 65071]
Revision	Vol. 54	December 20, 1989	[54 FR 52189]
Revision	Vol. 60	December 19, 1995	[60 FR 65387]
Revision	Vol. 65	December 6, 2000	[65 FR 76378]
Revision	Vol. 70	October 13, 2005	[70 FR 59848]

*Regulation 61-62.60, Subpart Da shall be amended as follows:*

**Subpart Da - “Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978”**

The provisions of Title 40 CFR Part 60, subpart Da as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 60 subpart Da			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 44	June 11, 1979	[44 FR 33613]
Revision	Vol. 48	January 27, 1983	[48 FR 3737]
Revision	Vol. 54	February 14, 1989	[54 FR 6663]
Revision	Vol. 54	May 17, 1989	[54 FR 21344]
Revision	Vol. 55	February 14, 1990	[55 FR 5212]
Revision	Vol. 55	May 7, 1990	[55 FR 18876]
Revision	Vol. 63	September 16, 1998	[63 FR 49453, 49454]
Revision	Vol. 64	February 12, 1999	[64 FR 7464]
Revision	Vol. 65	October 17, 2000	[65 FR 61744]
Revision	Vol. 66	April 10, 2001	[66 FR 18546]
Revision	Vol. 66	June 11, 2001	[66 FR 31177]
Revision	Vol. 66	August 14, 2001	[66 FR 42608]
Revision	Vol. 71	February 27, 2006	[71 FR 9866]

Regulation 61-62.60, Subpart Db shall be amended as follows:

**Subpart Db - “Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units”**

The provisions of Title 40 CFR Part 60, subpart Db as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 60 subpart Db			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 52	December 16, 1987	[52 FR 47842]
Revision	Vol. 54	December 18, 1989	[54 FR 51819, 51820]
Revision	Vol. 54	December 18, 1989	[54 FR 51825]
Revision	Vol. 55	May 7, 1990	[55 FR 18876]
Revision	Vol. 60	May 30, 1995	[60 FR 28062]
Revision	Vol. 61	March 29, 1996	[61 FR 14031]
Revision	Vol. 62	October 8, 1997	[62 FR 52641]
Revision	Vol. 63	September 16, 1998	[63 FR 49455]
Revision	Vol. 64	February 12, 1999	[64 FR 7464]
Revision	Vol. 65	March 13, 2000	[65 FR 13242]
Revision	Vol. 65	October 17, 2000	[65 FR 61744]
Revision	Vol. 66	April 10, 2001	[66 FR 18546]
Revision	Vol. 66	June 11, 2001	[66 FR 31177]
Revision	Vol. 66	August 14, 2001	[66 FR 42608]
Revision	Vol. 66	October 1, 2001	[66 FR 49830]
Revision	Vol. 71	February 27, 2006	[71 FR 9866]
Revision	Vol. 71	November 16, 2006	[71 FR 66681]

Regulation 61-62.60, Subpart HHHH shall be amended as follows:

**Subpart HHHH – [Reserved]**

Regulation 61-62.63, Subpart DDDDD shall be amended as follows:

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### Subpart DDDDD – [Reserved]

Regulation 61-62.63, Subpart JJJJJ shall be amended as follows:

### Subpart JJJJJ – [Reserved]

Regulation 61-62.63, Subpart KKKKK shall be amended as follows:

### Subpart KKKKK – [Reserved]

Regulation 61-62.72, Subpart A shall be amended as follows:

### Subpart A - “General Provisions”

The provisions of Title 40 CFR Part 72, subpart A, as originally published in the *Federal Register* and as subsequently amended upon publication in the *Federal Register* as listed below, are incorporated by reference as if fully repeated herein.

40 CFR Part 72 subpart A			
Federal Register Citation	Volume	Date	Notice
Original Promulgation	Vol. 58	January 11, 1993	[58 FR 3650]
Revision	Vol. 58	March 23, 1993	[58 FR 15634]
Revision	Vol. 58	June 21, 1993	[58 FR 33769]
Revision	Vol. 58	July 30, 1993	[58 FR 40746]
Revision	Vol. 59	November 22, 1994	[59 FR 60218]
Revision	Vol. 60	April 4, 1995	[60 FR 17100]
Revision	Vol. 60	April 11, 1995	[60 FR 18462]
Revision	Vol. 60	May 17, 1995	[60 FR 26510]
Revision	Vol. 62	October 24, 1997	[62 FR 55460]
Revision	Vol. 62	December 18, 1997	[62 FR 66278]
Revision	Vol. 63	October 27, 1998	[63 FR 57356]
Revision	Vol. 63	December 11, 1998	[63 FR 68400]
Revision	Vol. 64	May 13, 1999	[64 FR 25834]
Revision	Vol. 64	May 26, 1999	[64 FR 28564]
Revision	Vol. 66	March 1, 2001	[66 FR 12974]
Revision	Vol. 67	June 12, 2002	[67 FR 40394]
Revision	Vol. 67	August 16, 2002	[67 FR 53503]
Revision	Vol. 69	April 9, 2004	[69 FR 18801]
Revision	Vol. 70	May 12, 2005	[70 FR 25162]
Revision	Vol. 71	April 28, 2006	[71 FR 25328]

### Fiscal Impact Statement:

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

### Statement of Need and Reasonableness:

This 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: Amendments to Regulation 61-62, Air Pollution Control Regulations and Standards.

Purpose: The Federal requirements that necessitated the amendments to R. 61-62, described herein, have been effectively vacated by decisions of the United States Court of Appeals for the District of Columbia Circuit (Court of Appeals). Therefore, the Department has amended the aforementioned regulations by removing the vacated provisions to ensure enforceability of State regulations and clarify requirements for compliance.

Legal Authority: The legal authority for R. 61-62, Air Pollution Control Regulations and Standards is S.C. Code Section 48-1-10 et seq.

Plan for Implementation: The amendments take effect upon approval and adoption by the South Carolina Board of Health and Environmental Control, approval by the Legislature, and publication in the South Carolina *State Register* (*State Register*).

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

On May 18, 2005, the United States Environmental Protection Agency (EPA) published a final rule in the *Federal Register* titled, *Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units* (70 FR 28606), also referred to as the “Clean Air Mercury Rule” (CAMR). This final rule became effective July 18, 2005. The South Carolina CAMR became state-effective upon the publication of a Notice of Final Regulation in the *State Register* on June 22, 2007 (Vol. 31, Issue 6, Doc. No. 3083). The final package for the State CAMR was submitted to the EPA on August 16, 2007, for approval. On February 8, 2008, the United States Court of Appeals for the District of Columbia Circuit (Court of Appeals) vacated the CAMR (Case No. 05-1097). The EPA filed a petition for a rehearing by the full Court of Appeals, but the petition was denied. The EPA has received two extensions to appeal the vacatur. On October 17, 2008, the U.S. Department of Justice filed an appeal with the U.S. Supreme Court requesting that the court overturn the Court of Appeals vacatur of the CAMR. On February 6, 2009, the EPA motioned to dismiss its case and remove the petition currently pending before the Supreme Court. The Supreme Court denied the remaining industry request to review the Court of Appeals mandate on February 23, 2009.

On May 16, 2003, the EPA published a final rule in the *Federal Register* titled, *National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing; and National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing; Final Rule* (68 FR 26690), establishing National Emission Standards for Hazardous Air Pollutants (NESHAP) that required major sources of those types to apply maximum achievable control technology (MACT). These new subparts (40 CFR 63, subparts JJJJJ and KKKKK) are also known as the “Brick MACT” and “Clay MACT” respectively. This final rule became effective May 16, 2003, and was incorporated by reference in Regulation 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*, by a Notice of Final Regulation published in the *State Register* (Vol. 28, Issue 9, Doc. No. 2913) on September 24, 2004. On March 13, 2007, the Court of Appeals vacated this rule (Case No. 03-1202). The final mandate for this case was issued on June 18, 2007.

On September 13, 2004, the EPA published a final rule in the *Federal Register* titled, *National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters; Final Rule* (69 FR 55218), establishing NESHAP that required major sources of those types to apply MACT. This new subpart (40 CFR 63, subpart DDDDD) is also known as the “Boiler MACT”. This final rule became effective November 12, 2004, and was incorporated by reference in R. 61-62.63, by a Notice of Final Regulation published in the *State Register* (Vol. 29, Issue 8, Doc. No. 2980) on August 26, 2005. On June 8, 2007, the Court of Appeals vacated this rule (Case No. 04-1385). The final mandate for this case was issued on July 30, 2007.

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The Court of Appeals vacatur of the abovementioned rules effectively nullifies the Federal requirements established at the time of promulgation. The proposed amendments to remove these provisions from R. 61-62, are reasonable in that they ensure enforceability of State regulations and clarify the requirements for compliance.

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

There will not be a negative fiscal or economic impact as a result of this regulatory action. Amending R. 61-62, to remove the provisions of the CAMR, will decrease the cost to the regulated community and result in a reduction of the use of existing State resources. For more information on the original cost estimates and additional information, please refer to the promulgation of the State CAMR (*State Register* Vol. 31, Issue 6, Doc. No. 3083).

Amending R. 61-62, to remove the provisions of the vacated requirements of 40 CFR 63, subparts DDDDD, JJJJJ, and KKKKK will decrease the cost to the regulated community and result in the reduction of the use of existing State resources. Please refer to the promulgation of the abovementioned subparts (*State Register* Vol. 28, Issue 9, Doc No. 2913, and *State Register* Vol. 29, Issue 8, Doc No. 2980) for the original cost estimates and additional information.

### **UNCERTAINTIES OF ESTIMATES:**

There are no uncertainties of estimates relative to cost. These amendments will not create a burden for the public, the State or its political subdivisions. Refer to the above paragraph for cost estimates for the regulated community. Existing staff and resources will be utilized to implement these amendments.

### **EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:**

There will be no environmental or public health effect.

### **DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATIONS ARE NOT IMPLEMENTED:**

There will be no specific detrimental effect on the environment and public health if the abovementioned amendments are not implemented.

### **Statement of Rationale:**

Due to the Court of Appeals decisions in Cases No. 05-1097, 03-1202, and 04-1385 as described in the Statement of Need and Reasonableness above, the Department has determined it necessary to amend R. 61-62, to ensure enforceability of State regulations and to clarify requirements for compliance.

Document No. 4085

## DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

## CHAPTER 61

Statutory Authority: 1976 Code Sections 48-1-10 *et seq.*

61-62. Air Pollution Control Regulations and Standards

61-62.1. Definitions and General Requirements

**Synopsis:**

The United States Environmental Protection Agency (EPA) promulgated a final rule referred to as the Air Emissions Reporting Requirements (AERR) in the *Federal Register* on December 17, 2008 [73 FR 76540]. Pursuant to its authority under section 110 of Title I of the Clean Air Act (CAA), the EPA has long required State Implementation Plan (SIPs) to provide for the submission by states to the EPA of emission inventories containing information regarding the emissions of criteria pollutants and their precursors.

The purpose of the AERR is to harmonize reporting requirements under the NO<sub>x</sub> SIP Call and the Clean Air Interstate Rule (CAIR) which require inventories to be submitted 12 months after the beginning of each calendar year, and Consolidated Emissions Reporting Rule (CERR) which requires inventories to be submitted 17 months after the beginning of each calendar year. It also removes and simplifies some existing emissions reporting requirements which the EPA believes are not necessary or appropriate; allows states to better track changes in source emissions, shutdowns, and startups over time by using the 40 CFR 70 definition of major source for point source reporting (which defines sources based on potential to emit); deletes a requirement for states to report biogenic emissions; and offers states the option of reporting emissions for certain source categories.

Regulation 61-62.1, Definitions and General Requirements, currently specifies facilities emission reporting intervals based on actual emissions rather than potential to emit. The Department has amended this requirement in an effort to be consistent with Federal requirements under the AERR.

Regulation 61-62.1 also previously specified that major hazardous air pollutants (HAP) sources need only submit a summary sheet and calculations showing the source wide emissions of all HAPs emitted in excess of 200 pounds/year. The Department has deleted this specification so that more detailed HAP data can be collected to insure that the National Emissions Inventory (NEI) maintained by the EPA contains the best available data. The Department also specifies that sources with greater than 10 tons per year (tpy) for a single HAP and 25 tpy for combined total HAP emissions will still only need to supply this information every three years.

A Notice of Drafting was published in the *State Register* on April 24, 2009.

## Discussion of Revisions:

## SECTION CITATION/EXPLANATION OF CHANGE:

## Regulation, 61-62.1, Section III – Emissions Inventory:

The entire section has been revised to incorporate the requirements of the AERR and to expand reporting requirements.

## Regulation, 61-62.1 Section III (A):

Subsection is expanded to include a definition of point sources as defined by 40 CFR Part 70 and to give the Department flexibility on emissions reporting requirements which was previously included in Section III (B)(2)(i).

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Regulation, 61-62.1 Section III (B):

Subsection is revised to delete redundant source specifications that are included in the HAP additions to Table 1.

Regulation, 61-62.1 Section III (C)(1):

The entire subsection is revised to incorporate the requirements of the AERR, delete obsolete or unnecessary text, require reporting requirements by facility's potential to emit as defined by 40 CFR Part 70, and include reporting requirements for Hazardous Air Pollutant (HAP) emissions.

Regulation, 61-62.1 Section III (C)(3):

Subsection is revised to clarify reporting format and schedules, delete requirements previously involved with HAP reporting, update Federal amendment date for 40 CFR Subpart A, and delete redundant or unnecessary text.

### **Instructions:**

Replace Section III of R.61-62.1, Definitions and General Requirements, of R.61-62, Air Pollution Control Regulations and Standards.

### **Text:**

**Replace Section III, of R.61-62.1, to read:**

## **SECTION III - EMISSIONS INVENTORY**

### A. General

Emissions inventory is a study or compilation of pollutant emissions. The purposes of emissions inventories are to locate air pollution sources, to define the type and size of sources, to define the type and amount of emissions from each source, to determine pollutant frequency and duration, to determine the relative contributions to air pollution from classes of sources and of individual sources, to provide a basis for air permit fees, and to determine the adequacy of regulations and standards.

The requirements of this Section notwithstanding, an emissions inventory may be required from any source at any time.

### B. Applicability

The provisions of this Section shall apply to all stationary sources:

1. that include any point source defined as a major source according to 40 CFR Part 70; or
2. that are located in a non-attainment area that exceed the specified thresholds.

### C. Emissions Inventory Reporting Requirements

1. Beginning with the effective date of this regulation, these sources will submit an emissions inventory in a frequency specified by Table 1 by March 31st for the previous calendar year.

a. Type A Sources - Title V sources with potential annual emissions greater than or equal to any of the emission thresholds listed for Type A Sources in Table 1 of this Section. Beginning with the effective date of this regulation, these sources will submit an emissions inventory by March 31 of every year for the previous calendar year. Beginning on March 31, 2012 (with 2011 calendar year data) these sources will submit TAP and HAP data with their annual emissions inventory every third year for the previous calendar year.

b. Type B Sources - Title V sources with potential annual emissions during any year of the three year cycle greater than or equal to any of the emission thresholds listed for Type B Sources in Table 1 of this Section. Beginning on March 31, 2012 (with calendar year 2011 data), these sources will submit emissions inventories every 3 years for the previous calendar year.

c. NAA Sources - Sources located in a non-attainment area with actual annual emissions during any year of the three year cycle greater than or equal to any of the emission thresholds listed for NAA Sources in Table 1 of this Section. Beginning on March 31, 2012 (with calendar year 2011 data), these sources that are not also Type A Sources will submit emissions inventories every 3 years for the previous calendar year.

<b>Table 1 - Minimum Point Source Reporting Thresholds by Pollutant (tpy potential to emit<sup>1</sup>)</b>			
Pollutant	Annual cycle	Three-year cycle	
	Type A Sources <sup>2</sup>	Type B Sources <sup>2</sup>	NAA <sup>3</sup> Sources
SOx	≥2500	≥100	≥100
VOC	≥250	≥100	≥100 (moderate O <sub>3</sub> NAA)
			≥50 (serious O <sub>3</sub> NAA)
			≥25 (severe O <sub>3</sub> NAA)
			≥10 (extreme O <sub>3</sub> NAA)
NO <sub>x</sub>	≥2500	≥100	≥100 (all O <sub>3</sub> NAA)
CO	≥2500	≥1000	≥100 (all O <sub>3</sub> NAA)
			≥100 (all CO NAA)
Pb		≥5	≥5
PM <sub>10</sub>	≥250	≥100	≥100 (moderate PM <sub>10</sub> NAA)
			≥70 (serious PM <sub>10</sub> NAA)
PM <sub>2.5</sub>	≥250	≥100	≥100
NH <sub>3</sub>	≥250	≥100	≥100
HAP <sup>4</sup>		≥10 Single HAP	
		≥25 Combined HAPs	

<sup>1</sup> tons per year (tpy) potential to emit means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the Federal Administrator and included in the sources permit prior to the end of the reporting year.

<sup>2</sup> Type A Sources are a subset of the Type B Sources and are the larger emitting sources by pollutant.

<sup>3</sup> NAA = Non-Attainment Area. Special point source reporting thresholds apply for certain pollutants by type of non-attainment area. The pollutants by non-attainment area are:  
 Ozone: VOC, NO<sub>x</sub>, CO;  
 Carbon Monoxide: CO;  
 Particulate matter less than 10 microns: PM<sub>10</sub>.

<sup>4</sup> Hazardous Air Pollutant.

2. Other Requirements

a. Unless otherwise indicated, all emissions inventories shall be submitted to the Department by March 31 following the year of inventory. All applicable information will be recorded on the current format for reporting emissions data as provided by the Department.

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b. All newly permitted and constructed Title V sources and/or NAA Sources will complete and submit to the Department initial emissions inventories including the partial year when operation first began and the first full calendar year of operation. These sources shall then submit future emissions inventories on the schedule as described in Table 1 of this Section.

c. Any existing sources that are newly identified as Title V sources and/or NAA Sources will complete and submit to the Department an emissions inventory for the previous calendar year within 90 days of learning of applicability. These sources shall then submit future emissions inventories on the schedule as described in Table 1 of this Section.

d. Submittal of emissions inventories outside of the schedules in this Section will be accepted and reviewed only if a modification has occurred that required issuance of an air quality permit since the last emissions inventory submittal by the source. This modification must alter the quantity or character of the sources emissions. These sources may submit a new emissions inventory following the first full calendar year of operation after the modification. These sources shall then submit future emissions inventories on the schedule described in Table 1 of this Section.

e. Information required in an emissions inventory submittal to the Department will include the following:

- i. Information on fuel burning equipment;
- ii. Types and quantities of fuel used;
- iii. Fuel analysis;
- iv. Exhaust parameters;
- v. Control equipment information;
- vi. Raw process materials and quantities used;
- vii. Design, normal, and actual process rates;
- viii. Hours of operation;
- ix. Significant emission generating points or processes as discussed on the current form for reporting emissions data as provided by the Department;
- x. Any desired information listed in 40 CFR 51, Subpart A (December 17, 2008) that is requested by the Department;
- xi. Emissions data from all regulated pollutants. Beginning on March 1, 2012 (with 2011 calendar year data) sources will submit TAP and HAP data with their annual emissions inventory every third year for the previous calendar year;
- xii. Any additional information reasonably related to determining if emissions from an air source are causing standards of air quality to be exceeded.

f. A source may submit a written request to the Department for approval of an alternate method for estimating emissions outside of those methods prescribed by the Department. Such requests will be reviewed by the Department's emissions inventory staff on a case-by-case basis to determine if the alternate method better characterizes actual emissions for the reporting period than the Department's prescribed methods.

g. Emission estimates from insignificant activities listed on a source's permit shall be required only in the initial emissions inventory submitted by the source. If emissions from these insignificant activities have not been included in a past emissions inventory submitted to the Department, the source shall include these emissions in their next required emissions inventory submittal.

h. Copies of all records and reports relating to emissions inventories as required in this Section shall be retained by the owner/operator at the source for a minimum of five years.

**Fiscal Impact Statement:**

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

**Statement of Need and Reasonableness:**

This 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:**

**Purpose:** Regulation 61-62.1, Definitions and General Requirements, was revised to make necessary revisions for consistency with the new Federal emissions reporting requirements. In addition, the Department amended the State level reporting requirements to facilitate the collection of more detailed process level emissions inventory data (to include hazardous air pollutants (HAP) data) to insure that the National Emissions Inventory (NEI) maintained by the United States Environmental Protection Agency (EPA) contains the best available data.

**Legal Authority:** The legal authority for Regulation 61-62, Air Pollution Control Regulations and Standards, is S.C. Code Section 48-1-10 et seq.

**Plan for Implementation:** The amendments were approved by the Board of Health and Environmental Control and will take effect upon approval by the General Assembly and publication in the State Register. The amendments will be implemented by providing the regulated community with copies of the regulation.

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

The EPA promulgated a final rule referred to as the Air Emissions Reporting Requirements (AERR) in the *Federal Register* on December 17, 2008 [73 FR 76540]. Pursuant to its authority under section 110 of Title I of the Clean Air Act (CAA), the EPA has long required State Implementation Plans (SIPs) to provide for the submission by states to the EPA of emission inventories containing information regarding the emissions of criteria pollutants and their precursors.

The purpose of the AERR is to harmonize reporting requirements under the NO<sub>x</sub> SIP Call and Clean Air Interstate Rule (CAIR) which requires inventories to be submitted 12 months after the beginning of each calendar year, and Consolidated Emissions Reporting Rule (CERR), which requires inventories to be submitted 17 months after the beginning of each calendar year. The AERR also removes and simplifies some existing emissions reporting requirements, which the EPA believes are not necessary or appropriate; allows states to better track changes in source emissions, shutdowns, and startups over time by using the 40 CFR 70 definition of major source for point source reporting (which defines sources based on potential to emit); deletes a requirement for states to report biogenic emissions; and offers states the option of reporting emissions for certain source categories.

Regulation 61-62.1, Definitions and General Requirements, currently specifies facilities emission reporting intervals based on actual emissions rather than potential to emit. The Department has revised this requirement in an effort to be consistent with Federal requirements under the AERR. Specifying a facility's reporting frequency based on potential to emit rather than actual emissions will reduce the uncertainty in which sources report emissions year to year which is common under current rules. Approximately 15 of the 282 current Title V sources will be required to increase their emissions inventory reporting from a three year reporting frequency to an annual frequency based on this change, and approximately 50 facilities will go from one time reporting to a three year reporting frequency. Many facilities can avoid annual reporting; however, by taking limits in their federally enforceable permits.

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Regulation 61-62.1, Definitions and General Requirements, also currently specifies that major HAP sources need only submit a summary sheet and calculations showing the source wide emissions of all HAPs emitted in excess of 200 pounds/year. The Department has deleted this specification so that more detailed HAP data can be collected to insure that NEI maintained by the EPA contains the best available data. The Department is also requiring that sources with greater than 10 tons per year (tpy) for a single HAP and 25 tpy for combined total HAP emissions report their emissions information every three years.

### DETERMINATION OF COSTS AND BENEFITS:

There will be no increased cost to the State or its political subdivisions resulting from this revision. The standards to be adopted are already effective and applicable to the regulated community as a matter of Federal law. This action will reduce the number of times the Department will need to submit emissions inventory data to the EPA by harmonizing the 17 month schedule under the CERR with the 12 month schedule under CAIR. This reduced number of reporting times will result in a more efficient use of staff time and will allow staff more time to work on other emissions inventories like mobile sources.

### UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates relative to the costs to the State or its political subdivisions. The EPA has provided the estimated costs and benefits for these standards in the *Federal Register* notices that are cited within this document.

### EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

By implementing this rule, the Department will be able to more effectively track emissions of HAPs from large facilities in South Carolina. The Department will thereby improve the State's emission inventories to more effectively protect public health.

### DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATIONS ARE NOT IMPLEMENTED:

There will be no detrimental effect on the environment and/or public health associated with these revisions.

### Statement of Rationale:

The bulk of these revisions are being made to comply with the Federal mandate. The additional revisions will facilitate the collection of more detailed process level emissions inventory data. These revisions will change the reporting requirements for some facilities that are required to obtain a Title V permit issued by the Department.

Document No. 4081  
**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**  
**CHAPTER 61**

Statutory Authority: 1976 Code Sections 44-75-10 *et seq.*

61-96. Athletic Trainers

**Synopsis:**

South Carolina Code Section 1-23-120 directs that staff of State agencies review their regulations every five years and update them if necessary. Regulation 61-96, Athletic Trainers, was last revised in June of 1993. Since that time, there have been changes in South Carolina statutes as well as changes in national scope that have necessitated amendment of these regulations to update the current regulation.

A Notice of Drafting for these proposed amendments was published in the *State Register* on April 24, 2009.

**Changes made to the proposed regulation during legislative review as requested by  
the Senate Medical Affairs Committee by its letter dated March 23, 2010:**

Section L.3 was revised to remove reference to Athletic Trainers Advisory Committee members conducting business by telephone conference call and mail.

Section M.1 was revised to delete reference to the agenda being distributed one month prior to the Athletic Trainers Advisory Committee meeting.

Proposed Section N, Severability Clause, was deleted in entirety.

**DHEC's Section-by-Section Discussion of Revisions  
as submitted to the General Assembly on January 12, 2010:**

The Title is: 61-96. Athletic Trainers (no change to title)

Statutory Authority Section

The existing text cites the incorrect statute. Change was made to reflect the correct statute.

Table of Contents

Table updated to reflect changes.

Body of Document

Section A

Heading. Grammatical change made for codification and clarity.

A.1. The existing text "insure" changed to "assure" for clarity.

A.2. and A.3. Stylistic nonsubstantive change to citations of law for consistency - no change in statute.

B. The existing text that addresses the description of the profession is being revised to add "an individual" to give clarity to the reference of "athletic trainer;" several grammatical changes are made for clarity and readability; number of domains increased to seven to be consistent with the national standard.

B.1 through 6. Original domain headings were deleted. New domain headings and definitions were added for consistency with national standard.

C.1. Verbiage was added to clarify the successful completion of the athletic trainer examination; grammatical changes were made for clarity and consistency with the national standard.

C.1.a. Grammatical change made for clarity. Existing text broken into two sections for codification purposes.

C.1.b. Original text deleted as it was redundant.

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- C.1.c. Original text deleted as it was redundant.
- C.3. Verbiage changed to reflect the new name of the examination to be consistent with the national standard.
- C.4. and C.4.a. Added word “application” for clarification.
- C.4.b. Grammatical change made for clarity and readability.
- C.5. Stylistic revision to change “his/her” to “his or her” for consistency.
- C.6. Grammatical changes made for clarity, consistency and readability.
- D. Grammatical change made for clarity, consistency and readability.
- D.a. Verbiage deleted as it was redundant.
- D.b. through D.c.2. Codification changes made for consistency; the word “certificate” added for consistency within “Other Fees” section. Fee amounts are unchanged but are written out in words as well as numbers for stylistic consistency.
- E. Codification changes made for consistency within the document; verbiage added for clarity regarding the status of the applicant’s certificate.
- F. Codification changes made for consistency within the document; verbiage added to allow provisions for female athletic trainers; verbiage added to clearly identify those who are exempt from certification.
- F.a. Codification change made for consistency within the document; verbiage added to clarify exemption requirements for professionals.
- F.b. Codification change made for consistency within the document; verbiage added to allow provisions for female athletic trainers and clarity.
- F.c. Codification change made for consistency within the document; verbiage added to clarify employment exemption.
- F.d. Codification change made for consistency within the document; verbiage added for clarity.
- G. Codification and grammatical changes made for consistency and clarity within the document.
- H.1. Grammatical change made for clarity and readability.
- H.2. Stylistic revision to change “his/her” to “his or her.”
- J.1. Verbiage deleted for clarity.
- J.2. Codification and grammatical changes made for consistency and clarity within the document.
- J.3. Grammatical change made for consistency.
- J.4. Original verbiage deleted as it was unclear as written. New verbiage added to clarify continuing education requirement for certificate renewal.
- J.5. Grammatical changes made for clarity. Verbiage changed to accurately reflect role of committee.
- K. Subsection heading revised to more accurately reflect section contents.
- K.1. Grammatical changes made for readability and clarity. Verbiage added to clarify conduct violations that would result in revocation, suspension or denial of certification.
- K.2. Verbiage added for clarity and consistency within the document.
- K.3. Redundant language deleted. Verbiage added to identify role of the committee and the maximum revocation period.
- K.4. Appeals process language added for consistency with new appeal standards.
- L. Subsection heading revised to more accurately reflect section contents.
- L.1. Grammatical changes made for clarity.
- L.3. Verbiage added for readability.
- M. Category title “Responsibilities of the Department” added for consistency within the document.
- M.2 Stylistic nonsubstantive change to citation of law for consistency - no change in statute.
- M.5. Grammatical changes made for clarity and readability.
- M.6. Grammatical change made for readability.
- M.7. Verbiage changed from “keep track” to “maintain a record” for clarity.
- N. Severability clause added for consistency with departmental regulatory standard.

**Instructions:** Replace R.61-96 in its entirety by this amendment.

**Text:**

61-96. Athletic Trainers.

Statutory Authority: Sections 44-75-10 et seq., S.C. Code of Laws, 1976, as amended

Contents:

- 61-96.A. Purpose, Administration and Definitions.
- 61-96.B. Description of the Profession.
- 61-96.C. Certification.
- 61-96.D. Fees.
- 61-96.E. Reciprocity.
- 61-96.F. Exemption from Certification.
- 61-96.G. Grandfather Provision.
- 61-96.H. Change of Name and Address.
- 61-96.I. Professional Identification.
- 61-96.J. Continuing Education.
- 61-96.K. Revocation, Suspension and Denial of Certification; Penalties; Appeals Process.
- 61-96.L. Athletic Trainers Advisory Committee.
- 61-96.M. Responsibilities of the Department.
- 61-96.N. Severability.

A. Purpose, Administration and Definitions.

1. Purpose: The purpose of this regulation is to assure the highest degree of professional conduct by those engaged in offering athletic trainer services to the public and to safeguard the public's health, safety, and welfare by establishing minimum qualifications for those individuals wishing to offer athletic trainer services to the public.

2. Administration: All regulations pertaining to the administration of the "Athletic Trainers' Act of South Carolina", Sections 44-75-10 et seq., S.C. Code of Laws, 1976, as amended, shall be administered by the South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina.

3. Definitions: For the purpose of these Standards, the following definitions shall apply:

a. "Law" as used in these rules shall mean the "Athletic Trainers' Act of South Carolina", Sections 44-75-10 et seq., S.C. Code of Laws, 1976, as amended.

b. "Board" shall mean the Board of the South Carolina Department of Health and Environmental Control.

c. "Department" means the South Carolina Department of Health and Environmental Control.

d. "Committee" shall mean the South Carolina Athletic Trainers' Advisory Committee.

e. "Athletic Trainer" means a person with specific qualifications as set forth in Section 44-75-50 of the Law who, upon the advice and consent of a licensed physician, carries out the practice of care, prevention, and physical rehabilitation of athletic injuries, and who, in carrying out these functions, may use physical modalities, including, but not limited to, heat, light, sound, cold, electricity, or mechanical devices related to rehabilitation and treatment.

f. "Certificate" means official acknowledgement by the Department that an individual has successfully completed the education and other requirements referred to in the "Athletic Trainers' Act of South Carolina",

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Sections 44-75-10 et seq., which entitles that individual to perform the functions and duties of an athletic trainer.

g. "Licensed Physician" means a physician licensed by the South Carolina State Board of Medical Examiners.

h. "Employment of Athletic Trainer" shall mean a person who is engaged as an athletic trainer if the person is employed on a salary or contractual basis by an educational institution, a hospital, rehabilitation clinic, professional organization, or other bona fide athletic organization and performs the duties of an athletic trainer as a major responsibility of this employment.

i. "Advice and Consent of a Licensed Physician" shall mean the general written or oral standing orders and/or protocol signed by a licensed physician.

### B. Description of the Profession.

An athletic trainer is an individual who has successfully completed the college or university undergraduate degree and fulfilled the requirements for certification as established by the Board of Certification, Inc., in association with the National Athletic Trainers' Association (NATA), and successfully completed the Athletic Trainers Certification Examination as administered by the Board of Certification, Inc. Through a combination of formal classroom instruction and clinical experience, the athletic trainer is prepared to apply a wide variety of specific health care skills and knowledge within the domains/standards. The seven domains/standards of athletic training from which these specific tasks are measured in the examination are:

1. Direction: The athletic trainer renders services or treatment under the advice and consent of a licensed physician.

2. Prevention: The athletic trainer understands and uses preventative measures to assure the highest quality of care for every patient.

3. Immediate Care: The athletic trainer provides standard and immediate care procedures used in emergency situations, independent of setting.

4. Clinical Evaluation and Diagnosis: Prior to treatment the athletic trainer assesses the patient's level of function. The patient's input is considered as an integral part of the initial assessment. The athletic trainer follows the standards of clinical practice in an area of diagnostic reasoning and medical decision making.

5. Treatment Rehabilitation and Re-Conditioning: The athletic trainer develops the treatment program and determines the appropriate treatment, rehabilitation and/or reconditioning strategies. The treatment program objectives include long and short term goals and appraisal of those that the patient can realistically be expected to achieve from the program. This assessment measure determines effectiveness of the program and is incorporated into the program.

6. Program Discontinuation: The athletic trainer, in collaboration with the licensed physician, recommends discontinuation of athletic training services when the patient has received optimal benefit of the program. The athletic trainer, at the time of discontinuation, notes the final assessment of the patient's status.

7. Organization and Administration: All services are documented in writing by the athletic trainer and are part of the patient's permanent records. The athletic trainer accepts responsibility of recording details of the patient's health care status.

**C. Certification.**

1. Requirements: A person who seeks certification as an athletic trainer in the State of South Carolina must successfully complete the Athletic Trainer Certification Examination as administered by the Board of Certification, Inc., and satisfy the following requirements:

- a. Meets the athletic training curriculum requirements of a college or university; and
- b. Submits a certified transcript from the college or university along with the completed application.

2. Applications:

a. Each candidate for certification must file a written application on a form furnished upon request from the Department. The application must be completed in its entirety and must include all relative documents and fees.

b. An application must be completed by the applicant and reviewed by the Department within ninety (90) days of the date that the first document has been received by the Department. Any application not completed within this period will become void. Any consideration of certification after this date will require the applicant to submit a new application, new documents and appropriate fees. The applicant will be notified in writing of approval or denial of request for certification.

c. Once an application is reviewed by the Department, no refund of the application fee shall be issued.

d. Certification will remain current for two (2) years from the issue date.

3. Examination: The applicant must pass the Athletic Trainer Certification Examination as administered by the Board of Certification, Inc., in association with the National Athletic Trainers' Association before a certificate for South Carolina certification can be issued from the Department.

4. Renewal: With renewal being every two (2) years, the Department shall mail a renewal application form, sixty (60) days prior to the renewal date, to the last address registered with the Department, to the person to whom the certification was issued or renewed during the preceding renewal period. The athletic trainer shall then:

- a. Complete the renewal application form;
- b. Submit proof of continuing education credit as detailed in Section J, Continuing Education;
- c. Enclose the renewal fee; and
- d. File the above with the Department prior to the renewal date.

5. Failure to Renew: An athletic trainer who does not file with the Department his or her renewal application by the renewal date will be deemed to have allowed his or her certification to expire. Such certification may be reinstated by the Department, at its discretion, by the payment of the late renewal fee, provided the application is made within six (6) months of the renewal date. After six (6) months, a restoration fee will be charged to those individuals who wish to restore certification.

6. Reinstatement: A certificate which is revoked for failure to renew may be reinstated at the direction of the Department and the Committee within two (2) years of its expiration date. Any consideration for recertification will necessitate submission of a new application and will require the applicant to meet the then existing requirements.

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### D. Fees.

To be certified, athletic trainers practicing in the State of South Carolina must pay the fees according to the fee schedule listed below unless otherwise exempted by law. Appropriate fees must be made payable by credit card, check or money order to the South Carolina Department of Health and Environmental Control.

#### 1. Fees:

(a) Application Fee: The application fee shall be fifty dollars (\$50) due upon receipt of the application.

(b) Examination Fee: The examination fee will be the current examination fee of the National Athletic Trainers' Association. This fee is in addition to the application fee.

(c) Re-Examination Fee: The re-examination fee shall be the current National Athletic Trainers' Association re-examination fee.

(d) Biennial Renewal Fee: The biennial renewal fee shall be forty dollars (\$40) due on the anniversary date of the second year after the applicant is certified. Renewal fees will be due on the anniversary date every two years after that.

(e) Late Renewal Fees: A late renewal fee of fifty-five (\$55) will be charged to those individuals who renew with a six (6) month period after the biennial renewal date.

(f) Restoration Fee: A restoration fee of one-hundred dollars (\$100) will be charged to those individuals who fail to renew within the six (6) month late renewal schedule.

#### 2. Other Fees:

(a) Duplicate Certificate: Five dollars (\$5).

(b) Duplicate ID Certificate Card: Two dollars (\$2).

### E. Reciprocity.

Certification by Reciprocity: A certificate may be issued by the Department to any qualified athletic trainer holding certification in any other state if such other state recognizes the certificate of South Carolina in the same manner. The applicant must meet the following requirements for reciprocal certification:

1. The applicant is currently certified to practice athletic training under the laws of another state or territory.

2. The requirements for said certification are equivalent to those required in South Carolina.

3. The applicant's certificate has not been, and is not presently, suspended or revoked.

### F. Exemption from Certification.

No person shall represent him or herself as an athletic trainer unless he or she is certified by the Department, except as otherwise provided in this section. Exemptions apply as follows:

1. Licensed, registered, or certified professionals such as licensed physicians, nurses, physical therapists, and chiropractors practicing their professions are exempt if they do not assert to the public by any title or description as being athletic trainers.

2. A person rendering services that are the same as or similar to those within the scope of practice provided for in the Law is exempt as long as he or she is otherwise now employed or employed in the future as a faculty or staff member at the school in question and does not represent him or herself to be an athletic trainer.

3. Persons employed prior to June 19, 1984 by the State Department of Education, local boards of education, or private secondary or elementary schools for the treatment of injuries received by students participating in school sports activities are exempt.

4. A person serving as a student-trainer or in any similar position if the service is carried out under the supervision of a licensed physician or certified athletic trainer is exempt.

**G. Grandfather Provision.**

The Department may issue a certificate to an applicant who was actively engaged as an athletic trainer for a two-year period from June 19, 1979 to June 19, 1984. The applicant shall submit the following for documentation:

1. A notarized record of being employed on a salaried basis with an educational institute or bona fide athletic organization for the duration of the institution's school year, or the length of the athletic organization's season and performed the duties of an athletic trainer as the major responsibility of his employment.

2. A certified oath verifying that the documents submitted to the Department are "true and accurate".

3. Payment of an application fee as prescribed by the Department.

**H. Change of Name and Address.**

1. Change of Name: A request for a change of name from that under which the original certificate was issued shall be accompanied by a certified copy of a marriage certificate, court order or documentation of legal name change and appropriate fee. See fee schedule.

2. Change of Address: Each person who has a certificate shall keep the Department apprised in writing of his or her current name and address at all times.

**I. Professional Identification.**

1. Titles and Abbreviations: A person certified by the Department to practice and perform athletic training in South Carolina may use the title, "State Certified Athletic Trainer and/or the abbreviation S.C.A.T.".

2. Production and Display of Certificate: A person certified by the Department to practice and perform athletic training in South Carolina shall carry said card at all times, and show said card when requested.

**J. Continuing Education.**

1. Definition and Philosophy: Each individual certified as an athletic trainer is responsible for service to the consumer and is accountable to the consumer, the employer, and the profession for evidence of maintaining high levels of skill and knowledge. Continuing education is defined as education beyond the basic preparation required for entry into the profession, directly related to the performance and practice of athletic training.

2. Requirements: Regulations set the requirement for attending and completing two courses during the two (2) year certification period. These courses are as follows:

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a. A course in cardiopulmonary resuscitation (CPR) offered by the American Red Cross or the American Heart Association.

b. A designated professional seminar offered yearly by the South Carolina Athletic Trainers' Association (SCATA) at the association's annual conference.

c. A seminar shall mean two (2) designated courses within the scope of that year's conference.

d. The development of the course content and the monitoring of the courses will be under the supervision of the Committee.

e. At the completion of the appropriate courses during the seminar, a card will be issued to the athletic trainer by a member of the Committee.

f. Equivalent courses may be approved by the Committee.

g. The Committee will set the continuing education standards on an annual basis.

3. Reporting Procedures for Continuing Education: It is the responsibility of the athletic trainer to submit to the Department, by the renewal date of certification, proof of the completion of the continuing education requirements. Documentation shall include:

a. A photocopy of a current CPR card from either the American Red Cross or the American Heart Association; and

b. A photocopy of the SCATA professional seminar card, signed by a member of the committee.

4. Enforcement: Without documentation of the required continuing education, as outlined in J.2 and J.3 above, an athletic trainer's certification will not be renewed at the two-year renewal date. Documentation for the continuing education units must be current at the time of renewal.

5. Appeals: If the athletic trainer is unable to obtain the proper continuing education units by the time of renewal, he/she may submit a letter of appeal with the renewal application. This letter must document the reason(s) the athletic trainer was unable to obtain the necessary continuing education units. The Committee will recommend the course of action to be taken.

### K. Revocation, Suspension and Denial of Certification; Penalties; Appeals Process.

1. Standards of Conduct: At the discretion of the Department, athletic trainers may have their certificates suspended or revoked at any time the Department determines that the holder of the certificate no longer meets the prescribed qualifications set forth by the Department or has committed any of the following acts:

a. Has engaged in any conduct considered by the Board or Department to be detrimental to the profession of athletic training;

b. Has used fraud or deceit in procuring or, attempting to procure, a certificate or renewal of a certificate to practice athletic training;

c. Has violated, aided, or abetted others in violation of any provision of the law, or these regulations;

d. Has practiced athletic training without a valid certificate.

2. Penalties:

Any person violating the provisions of Sections 44-75-10 et seq. is guilty of a misdemeanor and upon conviction must be punished by a fine of not less than twenty-five (\$25) nor more than two hundred dollars (\$200).

3. Actions: The Committee may recommend revocation or suspension of a certificate. Revocation may be for a period up to two years.

4. Appeals Process: Decisions to deny, suspend or revoke an athletic trainer's certification becomes the final agency decision fifteen (15) days after notice of the Department decision has been mailed to the applicant or holder of the certificate by certified mail, return receipt requested, unless a written request for final review is filed with the DHEC Board by the applicant or holder of the certificate pursuant to Section 44-1-60 of the S.C. Code of Laws, 1976, as amended, and applicable law.

L. Athletic Trainers' Advisory Committee.

1. Organization: The South Carolina Athletic Trainers' Advisory Committee shall consist of nine members appointed by the Board. Two members must be from the Department, one must be from the State Board of Medical Examiners, four must be certified athletic trainers and two must be from the general public who are not certified or licensed in any health care fields and are not in any way associated with athletic trainers.

2. Officers: The Advisory Committee shall annually elect a chairman and vice-chairman from its membership. These two officers shall have all the privileges of re-election.

3. Meetings: The Committee must meet at least once a year. Additional meetings may be held on call of the chairman or at the written request of two Committee members. A record must be kept of all transactions which have been called for by the chairman and a written report shall be submitted for the minutes at the next regularly scheduled meeting. A quorum of two thirds of the Committee membership is required for any meeting of the Committee.

M. Responsibilities of the Department.

The South Carolina Department of Health and Environmental Control, with the advice of the Committee, shall:

1. Coordinate with the Committee chairman to develop and distribute an agenda for committee meetings.
2. Post public notices of upcoming Committee meetings per the Freedom of Information Act and notify the media of the meetings. The following statement shall be read by the chairman of the Committee at the beginning of each public meeting: "Let the minutes reflect that, as required by the provisions of the South Carolina Freedom of Information Act, Section 30-4-80(E) of the S.C. Code of Laws, 1976, as amended, , notification of this meeting has been given to all persons, organizations, local news media and other news media which have requested such notification".
3. Assure that the Committee's address and telephone number is listed in the state telephone directory.
4. Take Committee meeting minutes, type, and send to the chairman for signature within two weeks after the meeting. The Department will distribute the minutes to committee members within one week after receiving a signature from the chairman.

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5. Receive applications for athletic trainer certification and process for routine action. Unusual applications will be brought before the full Committee. If there is a problem, or if the Department needs additional information, the applicant is notified in writing of the delay by the Department.

6. Collect application fees, certification renewal fees, and other fees deemed necessary for the certification program. These fees are non-refundable to the applicant.

7. Maintain a record of each athletic trainer's certification expiration date.

8. Work with the Committee chairman to develop a formal budget for the Committee.

9. Develop and maintain an inquiry log to track all correspondence related to the athletic trainer's certification program and record all complaints.

10. Develop and update a rules and regulations manual for the certification program.

11. Investigate violations and complaints and follow-up with proper legal procedures.

### **Fiscal Impact Statement:**

There will be no additional costs to the State to implement these changes. See Statement of Need and Reasonableness below.

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

This statement of need and reasonableness was determined by staff analysis pursuant to the S.C. Code Ann. Sections 1-23-115(C)(1)-(3) and (9)-(11) (1976, as amended).

### **DESCRIPTION OF REGULATION:**

Purpose: Revision of this regulation satisfies a legislative mandate requiring the Department perform a review of its regulations every five years and update them if necessary. This revision will provide consistency with changes in South Carolina law and changes to the national scope and standards by updating the description of the profession, certification procedures and examination requirements. The enforcement and appeal sections will also be updated to bring the regulations current with changes in state law, and a severability clause will be added. Additionally, changes will be proposed throughout the regulation to improve its overall quality, i.e., stylistic changes in outline, grammatical and punctuation corrections, and language clarifications. The table of contents will be updated, and other minor corrections may be proposed as needed.

Legal Authority: S.C. Code Ann. Section 44-75-10 et seq.

Plan for Implementation: This revision will take effect upon publication in the *State Register* following approval by the Board of Health and Environmental Control and the S.C. General Assembly. The revision will be implemented by providing the regulated community with copies of the regulation and enforced through credential verification and subsequent certification by the Department.

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

1. The revision is needed and reasonable because it will bring the Department into compliance with the statutory mandate to review and update regulations if necessary.

2. The revision is needed and reasonable because it is necessary to update the regulation to give consistency to South Carolina law. (e.g., SC Code of Laws, Section 44-75-10 et seq.)

3. The revision is needed and reasonable because it will bring the regulation more into consistency with national scope.

4. The revision is needed and reasonable because it will update the enforcement action process and appeal process.

5. The proposed revision is needed and reasonable because it will improve the overall quality of the regulation.

**DETERMINATION OF COSTS AND BENEFITS:**

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

**UNCERTAINTIES OF ESTIMATES:**

None.

**EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:**

There will be no effect on the environment. The regulation revision will promote public health by updating standards for regulating athletic trainers.

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

If the regulation is not implemented, the S.C. regulation will not be consistent with the National Athletic Trainer Standards.

**Statement of Rationale:**

Department staff determined during its review of R.61-96 that it was appropriate to revise the regulation. R.61-96 was last amended in June of 1993. See the Statement of Determination of Need and Reasonableness above for more information regarding the factors influencing the Department staff decision to revise the regulation.

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Document No. 4080

### DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

#### CHAPTER 61

Statutory Authority: 1976 Code Sections 44-56-10 et seq.

#### 61-79. Hazardous Waste Management Regulations

##### Synopsis:

1. The Department adopted three amendments to Regulation 61-79 that the U.S. Environmental Protection Agency (EPA) promulgated between July 1, 2007 and June 30, 2008. The adoption of these three rules was optional to states. The Department has amended R.61-79 to adopt these three rules to maintain conformity with federal regulations. These amendments are less stringent than the previous federal equivalent and will modify the current state regulations. Legislative review of the three rules is required because, while the changes in these rules will not make South Carolina less stringent than federal initiatives, the changes will be less stringent than current South Carolina regulations. This amendment was approved by the Board of Health and Environmental Control on October 8, 2009. The three rules adopted by the Department are as follows:

Rule (1) The Regulation of Oil-Bearing Hazardous Secondary Materials Processed in a Gasification System to Produce Synthesis Gas. This rule was published in the *Federal Register* at 73 FR 57 on January 2, 2008. See Discussion of changes below and the Statement of Need and Reasonableness herein.

Rule (2) National Emission Standards for Hazardous Air Pollutants: Standards for Hazardous Waste Combustors; Amendments (NESHAP): Final Standards for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II). This amendment was published in the *Federal Register* at 73 FR 18970 on April 8, 2008. See Discussion of changes below and the Statement of Need and Reasonableness herein.

Rule (3) Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Amendment to Hazardous Waste Code F019. This amendment was published in the *Federal Register* at 73 FR 31756 on June 4, 2008. See Discussion of changes below and the Statement of Need and Reasonableness herein.

2. Site Specific Inspection Checklist: The Department is also amending R.61-79 to reinsert a state requirement under R.61-79.270 Subpart B Permit Application, at 270.10 - General Application Requirements pursuant to 40 CFR 270. This regulation requires a site-specific inspection checklist for use in compliance inspections. See Discussion of changes below and the Statement of Need and Reasonableness herein.

3. The Federal Manifest System (FMS), for shipping of hazardous waste. The FMS was adopted by South Carolina on June 27, 2007, pursuant to 40 CFR 262 which requires a national manifest for shipping hazardous waste. The Department amended section 262 of R.61-79 by removing the reference to the *Federal Register* for the specifics of the manifest instructions and replaced it with the actual federal language of the requirements for obtaining and filing official copies of the national manifest. See Discussion of changes below and the Statement of Need and Reasonableness herein.

A Notice of Drafting was published in the State Register on November 28, 2008.

#### Section-by-Section Discussion of Revisions

##### R.61-79.

260.10 Definitions. Add in alphabetical order the definition of "Gasification" to provide a definition for the process of regulating oil-bearing hazardous secondary materials in the petroleum refining industry to produce synthesis gas.

261.4 Revise 261.4(a)(12)(i) by adding gasification in alphabetical order to the list of Exclusions under the Identification and listing of hazardous waste section that starts with the words: "...including, but not limited to, distillation, catalytic cracking, fractionation, gasification (as defined in 40 CFR 260.10) thermal cracking units (i.e., cokers)..."

261.31(a)/Table Amend (a)/Table by revising the entry for F019. This is a table of hazardous waste from nonspecific sources.

261.31(b)(4) Add paragraph (b)(4) and (b)(4)(i)-(ii) - to establish the requirements for the F019 listing of wastewater treatment sludges from the manufacturing of motor vehicles using a zinc phosphating process. 261.31(b)(4)(i) is added to clarify the definition of motor vehicle manufacturing for the purposes of the F019 exclusion. 261.31(b)(4)(ii) is added to clarify record keeping requirements and retention schedules in the F019 rule.

262.21 Introductory paragraph remains. Remove "Reserved status" for (a) through (f). Remove the reference to the *Federal Register* in the 262.21 Note. Add sections 262.21(a)-(f) to provide specific information on filling out a manifest. (g) remains the same. Add (h) through (m). This rule on the national Manifest has already been adopted into the SC regulations but the specific instructions that were referenced in the *Federal Register* are being added to the regulation verbatim to aid inspectors in the field rather than referencing the *Federal Register* that finalized this rule.

264.340(b)(1) and (3) and (5) Revise paragraphs (b)(1) and (b)(3) to clarify several compliance and monitoring provisions and to correct omissions in the NESHAP rule promulgated October, 2005. Remove paragraph (b)(5) to avoid duplication. Since paragraph (b)(5) is removed, the language in (b)(1) must be changed to reflect the deletion of paragraph (b)(5). Language is added to (b)(3) for clarification. Sections (b)(2) and (b)(4) remain the same.

266.100(b)(3)(ii) Redesignate the second paragraph (b)(3)(ii) as (b)(3)(iii) to correct a typographical error.

270.10(m) Insert a State specific inspection checklist. This checklist requirement was overwritten by a federal requirement under the NESHAP rule adopted in June 2007, effectively deleting the state required checklist. The requirement for the checklist is being put back into the regulations for inspectors. It was originally at 270.10(l) but since there is now a federal requirement at 270.10(l), the checklist will be reinserted at 270.10(m).

**Instructions:** Amend R.61-79 pursuant to each individual instruction provided with the text below:

**Text:**

The following sections have been added, deleted, or revised. All other sections of R.61-79 will remain.

**260.10 Definitions. Add in alphabetical order the following definition:**

"Gasification" For the purpose of complying with 40 CFR 261.4(a)(12)(i), gasification is a process, conducted in an enclosed device or system, designed and operated to process petroleum feedstock, including oil-bearing hazardous secondary materials through a series of highly controlled steps utilizing thermal decomposition, limited oxidation, and gas cleaning to yield a synthesis gas composed primarily of hydrogen and carbon monoxide gas.

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### **Revise 261.4(a)(12)(i) to include gasification alphabetically in the list of Exclusions under the Identification and listing of hazardous waste:**

Oil-bearing hazardous secondary materials (i.e., sludges, byproducts, or spent materials) that are generated at a petroleum refinery (SIC code 2911) and are inserted into the petroleum refining process (SIC code 2911 – including, but not limited to, distillation, catalytic cracking, fractionation, gasification (as defined in 40 CFR 260.10) or thermal cracking units (i.e., cokers)) unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under this paragraph, provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery, and still be excluded under this provision. Except, as provided in paragraph (a)(12)(ii) of this section, ...

### **261.31(a)/Table Amend paragraph (a) by revising table entry for F019 as follows:**

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
F019.....	Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process.(revised 12/93) Wastewater treatment sludges from the manufacturing of motor vehicles using a zinc phosphating process will not be subject to this listing at the point of generation if the wastes are not placed outside on the land prior to shipment to a landfill for disposal and are either: disposed in a Subtitle D municipal or industrial landfill unit that is equipped with a single clay liner and is permitted, licensed or otherwise authorized by the state; or disposed in a landfill unit subject to, or otherwise meeting, the landfill requirements in 258.40, 264.301 or 265.301. For the purposes of this listing, motor vehicle manufacturing is defined in paragraph (b)(4)(i) of this section and (b)(4)(ii) of this section describes the recordkeeping requirements for motor vehicle manufacturing facilities.	(T)

### **261.31 Add paragraph (b)(4) and (4)(i)-(ii) to read as follows:**

(4) For the purposes of F019 listing, the following apply to wastewater treatment sludges from the manufacturing of motor vehicles using a zinc phosphating process.

(i) Motor vehicle manufacturing is defined to include the manufacture of automobiles and light trucks/utility vehicles. Facilities must be engaged in manufacturing complete vehicles or chassis only.

(ii) Generators must maintain records, to prove that the exempted sludges meet the conditions of the listing. Records must include: volume of waste generated and disposed off site; when the wastes were generated and sent off site; name and address of receiving facility; documentation confirming receipt. Generators must maintain these documents no less than three years. Retention period for documentation is automatically extended during an enforcement action or as requested by the Regional Administrator or state regulatory authority.

### **262.21 Section heading remains the same. Introductory paragraph remains. Remove “Reserved status” for (a) through (f). Note that follows [Reserved] remains the same, except delete the reference to the Federal Register. Add sections 262.21(a)-(f) to provide specific information on filling out a manifest. (g) remains the same. Add (h) through (m).**

The manifest shall be on a form designated in 262.20(a), shall be completed as required by the instructions, and must contain all of the following information: 262.21 Note: Generators are required to use EPA forms from a registered source.

(a)(1) A registrant may not print, or have printed, the manifest for use or distribution unless it has received approval from the EPA Director of the Office of Solid Waste to do so under paragraphs (c) and (e) of this section.

(2) The approved registrant is responsible for ensuring that the organizations identified in its application are in compliance with the procedures of its approved application and the requirements of this section. The registrant is responsible for assigning manifest tracking numbers to its manifests.

(b) A registrant must submit an initial application to the EPA Director of the Office of Solid Waste that contains the following information:

- (1) Name and mailing address of registrant;
- (2) Name, telephone number and email address of contact person;
- (3) Brief description of registrant's government or business activity;
- (4) EPA identification number of the registrant if applicable;

(5) Description of the scope of the operations that the registrant plans to undertake in printing, distributing, and using its manifests, including:

(i) A description of the printing operation. The description should include an explanation of whether the registrant intends to print its manifests in-house (*i.e.*, using its own printing establishments) or through a separate (*i.e.*, unaffiliated) printing company. If the registrant intends to use a separate printing company to print the manifest on its behalf, the application must identify this printing company and discuss how the registrant will oversee the company. If this includes the use of intermediaries (e.g., prime and subcontractor relationships), the role of each must be discussed. The application must provide the name and mailing address of each company. It also must provide the name and telephone number of the contact person at each company;

(ii) A description of how the registrant will ensure that its organization and unaffiliated companies, if any, comply with the requirements of this section. The application must discuss how the registrant will ensure that a unique manifest tracking number will be pre-printed on each manifest. The application must describe the internal control procedures to be followed by the registrant and unaffiliated companies to ensure that numbers are tightly controlled and remain unique. In particular, the application must describe how the registrant will assign manifest tracking numbers to its manifests. If computer systems or other infrastructure will be used to maintain, track, or assign numbers, these should be indicated. The application must also indicate how the printer will pre-print a unique number on each form (e.g., crash or press numbering). The application also must explain the other quality procedures to be followed by each establishment and printing company to ensure that all required print specifications are consistently achieved and that printing violations are identified and corrected at the earliest practicable time;

(iii) An indication of whether the registrant intends to use the manifests for its own business operations or to distribute the manifests to a separate company or to the general public (e.g., for purchase);

(6) A brief description of the qualifications of the company that will print the manifest. The registrant may use readily available information;

(7) Proposed unique three-letter manifest tracking number suffix. If the registrant is approved to print the manifest, the registrant must use this suffix to pre-print a unique manifest tracking number on each manifest;

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(8) A signed certification by a duly authorized employee of the registrant that the organizations and companies in its application will comply with the procedures of its approved application and the requirements of this section and that it will notify the EPA Director of OSW of any duplicated manifest tracking numbers as soon as it becomes known.

(c) EPA will review the application submitted under paragraph (b) of this section.

(d)(1) Upon EPA approval of application, EPA will provide registrant an electronic file of manifest, continuation sheet, and manifest instructions and ask registrant to submit three manifests and continuation sheet samples, except as noted in paragraph (d)(3) of this section. The registrant's samples must meet all of the specifications in paragraph (f) of this section and be printed by the company that will print the manifest as identified in the application approved under paragraph (c).

(2) Registrant must submit a description of the manifest samples as follows:

(i) Paper type;

(ii) Paper weight of each copy;

(iii) Ink color of the manifest's instructions. If screening of the ink was used, the registrant must indicate the extent of the screening; and

(iv) Method of binding copies.

(3) The registrant need not submit samples of the continuation sheet if it is printed on same paper and uses same ink and binding as manifest samples.

(e) EPA will evaluate the forms and either approves the registrant to print as proposed or request information or modification. EPA will notify the registrant of decision by mail. The registrant cannot use or distribute forms until EPA approves them. An approved registrant must print the manifest and continuation sheet according to its application approved under paragraph (c) and the manifest specifications in paragraph (f). It also must print using the approved paper type, ink color, and binding method.

(f) Paper manifests and continuation sheets must be printed according to the following specifications:

(1) The manifest and continuation sheet must be printed with the exact format and appearance as EPA Forms format. However, information required to complete manifest may be pre-printed.

(2) A unique tracking number assigned w/ EPA approved numbering system must be pre-printed in Item 4. It must have a unique three-letter suffix following nine digits.

(3) The manifest and continuation sheet must be printed on durable 8.5x11 in. white paper.

(4) The manifest and continuation sheet must be printed in black ink except marginal words indicating copy distribution in red ink.

(5) The manifest and continuation sheet must be printed as six copy forms. Copy-to-copy registration must be w/in 1/32<sup>nd</sup> of an in. Handwritten and typed impressions must be legible on all copies. Copies must be bound together by one or more common stubs.

(6) Each copy of the manifest and continuation sheet must indicate how the copy must be distributed as follows:

- (i) Page 1: "Designated facility to destination State (if required)".
- (ii) Page 2: "Designated facility to generator state (if required)".
- (iii) Page 3: "Designated facility to generator".
- (iv) Page 4: "Designated facility's copy".
- (v) Page 5: "Transporter's copy".
- (vi) Page 6: "Generator's initial copy".

(7) The instructions in the appendix to part 262 must appear legibly on the back of the copies of the manifest and continuation sheet as provided in this paragraph (f). The instructions must not be visible through the front of the copies when photocopied or faxed.

- (i) Manifest Form 8700-22:
  - (A) The "Instructions for Generators" on Copy 6;
  - (B) The "Instructions for International Shipment Block" and "Instructions for Transporters" on Copy 5; and
  - (C) The "Instructions for Treatment, Storage, and Disposal Facilities" on Copy 4.

- (ii) Manifest Form 8700-22A:
  - (A) The "Instructions for Generators" on Copy 6;
  - (B) The "Instructions for Transporters" on Copy 5; and
  - (C) The "Instructions for Treatment, Storage, and Disposal Facilities" on Copy 4.

(g)(1) A generator may use manifests printed by any source so long as the source of the printed form has received approval from EPA to print the manifest. A registered source may be a:

- (i) State agency;
- (ii) Commercial printer;
- (iii) Hazardous waste generator, transporter or TSDF; or
- (iv) Hazardous waste broker or other preparer.

(2) A generator must determine whether the generator state or consignment state regulates any additional wastes. They must also determine whether the consignment or generator state requires the generator to submit any copies of the manifest to these states. In these cases the generator is responsible for supplying photocopies.

(h)(1) If an approved registrant would like to update information provided in application, the registrant must revise the application and submit to the EPA Director of OSW along with an indication or explanation of update ASAP. If the Agency denies revision, it will explain the reasons and contact registrant for modification.

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(2) If registrant would like a new tracking number suffix, he must submit a proposed suffix to the EPA Director of OSW and a reason for requesting it. The Agency will approve or deny and provide an explanation.

(3) If a registrant would like to change paper type or weight, or ink color, or binding method of manifest or continuation sheet, then he must submit three samples of the revised form for EPA review. If the approved registrant would like to use a new printer, he must submit three manifest samples printed by the new printer and a brief description of the printer's qualifications. EPA will either approve or request additional information or modification. EPA will notify the registrant of decisions by mail. The registrant cannot distribute revised forms until EPA approves.

(i) If, subsequent to approval, a registrant typesets its manifest or continuation sheet instead of using the electronic file of the forms provided by EPA, it must submit three samples of the manifest or continuation sheet to the registry for approval. EPA will either approve or request additional information or modification. EPA will notify the registrant of its decision by mail. The registrant cannot distribute forms until EPA approves them.

(j) EPA may exempt a registrant from the requirement to submit form samples if the Agency is persuaded that a separate review of the registrant's forms would serve little purpose in informing an approval decision. A registrant may request an exemption from EPA by indicating why it is warranted.

(k) An approved registrant must notify EPA by phone or email as soon as it becomes aware that it has duplicated tracking numbers on any manifests that have been used or distributed.

(l) If, subsequent to approval of a registrant, EPA becomes aware that the approved paper type, weight, ink color or binding method of registrant's forms is unsatisfactory, EPA will contact the registrant and require modifications.

(m)(1) EPA may suspend and revoke printing privileges if we find that the registrant:

(i) Has used or distributed forms that deviate from approved form samples; or

(ii) Exhibits a continuing pattern of behavior in using or distributing manifests that contain duplicate tracking numbers.

(2) EPA will send a warning letter to the registrant that specifies the date by which it must come into compliance with the requirements. If the registrant does not come into compliance by the specified date, EPA will send a second letter notifying the registrant that EPA has suspended or revoked its printing privileges. An approved registrant must provide information on its printing activities to EPA if requested.

### **Amend paragraph 264.340 (b)(1) to read:**

(b)(1) Except as provided by paragraphs (b)(2) through (b)(4) of this section, the standards of this part do not apply to a new hazardous waste incineration unit that becomes subject to RCRA permit requirements after October 12, 2005; or no longer apply when an owner or operator of an existing hazardous waste incineration unit demonstrates compliance with the maximum achievable control technology (MACT) requirements of 40 CFR part 63, Subpart EEE, by conducting a comprehensive performance test and submitting to the Department a Notification of Compliance under 40 CFR 63.1207(j) and 63.1210(d) documenting compliance with the requirements of part 63, subpart EEE.

### **Amend paragraph 264.340 (b)(3) to read:**

(3) The particulate matter standard of 264.343(c) remains in effect for incinerators that elect to comply with the alternative to the particulate matter standard under 40 CFR 63.1206(b)(14) and 63.1219(e).

**Remove paragraph 264.340 (b)(5) to avoid duplication.****266.100(b)(3)(ii) Redesignate the second paragraph (b)(3)(ii) as (b)(3)(iii)**

- (i) 266.105-Standards to control particulate matter;
- (ii) 266.106-Standards to control metals emissions, except for mercury; and
- (iii) 266.107-Standards to control hydrogen chloride and chlorine gas.

**Insert 270.10(m) to read:**

(m) A copy of a site specific inspection checklist shall be prepared by the applicant. The checklist shall be approved by the Department for use by the Department in conducting compliance inspections and shall include all applicable requirements of 261 through 270. An amended checklist shall be submitted to the Department for approval each time a permit modification is requested. The amended checklist shall accompany the permit modification request.

**Fiscal Impact Statement:**

There will be minimal cost to the state and its political subdivisions. See Statement of Need and Reasonableness below.

**Statement of Need and Reasonableness:**

This Statement of Need and Reasonableness complies with SC Code Ann. Section 1-23-115(c)(1)-(3) and (9)-(11).

DESCRIPTION OF REGULATION: Proposed amendment of R.61-79, Hazardous Waste Management Regulations.

Purpose: The purpose of this amendment is to maintain State consistency with regulations of the United States Environmental Protection Agency (EPA), which promulgated amendments to 40 CFR 260 through 266, between July 1, 2007 and June 30 2008. The Department will also reinsert a State required checklist for use by inspectors and verbatim instructions for the use of a national manifest, replacing the reference to the *Federal Register* that provided the instructions.

Legal Authority: South Carolina Hazardous Waste Management Act, 1976 S. C. Code Ann. Section 44-56-10 et seq.

Plan for Implementation: Upon final approval by the South Carolina General Assembly and publication in the *State Register* as a final regulation, amended regulations will be provided in hard copy and electronic formats to the community at cost through the Department's Freedom of Information Office and at the Bureau web site.

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

1. The U.S. EPA promulgated amendments to 40 CFR 260, 261, 264 and 266 in three Final Rules between July 1, 2007 and June 30, 2008. The adoption of these three rules was optional to states. The Department amended R.61-79 to adopt these three rules to maintain conformity with federal regulations. The new rules will be less stringent than current state regulation. The determination of need and reasonableness for the three rules is as follows:

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Rule (1). The Regulation of Oil-Bearing Hazardous Secondary Materials Processed in a Gasification System to Produce Synthesis Gas. This was published in the *Federal Register* at 73 FR 57 on January 2, 2008. EPA amended an existing exclusion from the definition of solid waste for oil-bearing hazardous secondary materials when they are processed in a gasification system at a petroleum refinery for the production of synthesis gas. The rationale behind the rule is to capture as much energy from a barrel of oil as possible to maximize production efficiencies at petroleum refineries in an energy-constrained world. The final rule revises this exclusion to add gasification to the list of recognized petroleum refinery processes into which oil-bearing hazardous secondary materials can be legitimately recycled.

Rule (2). National Emission Standards for Hazardous Air Pollutants: Standards for Hazardous Waste Combustors; Amendments (NESHAP): Final Standards for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II). This amendment was published in the *Federal Register* at 73 FR 18970 on April 8, 2008. This rule amends the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) final rule for typographical errors and clarification of compliance monitoring provisions and finalizes amendments to NESHAP. EPA is finalizing amendments to NESHAP for hazardous waste combustors, which EPA promulgated on October 12, 2005 and SC adopted in June 2007. The amendments in this rule to the October 2005 final rule are designed to clarify several compliance and monitoring provisions and correct several omissions and typographical errors in the final rule. This amendment is to finalize the amendments to facilitate compliance and improve understanding of the first rule requirements.

Rule (3). Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Amendment to Hazardous Waste Code F019. This amendment was published in the *Federal Register* at 73 FR 31756 on June 4, 2008. EPA is amending the list of hazardous wastes from non-specific sources (F-wastes) by modifying the scope of the Hazardous Waste F019 listing to exempt wastewater treatment sludges from zinc phosphating when such phosphating is used in the motor vehicle manufacturing process, provided the wastes are not placed outside on the land prior to shipment to a landfill for disposal and the wastes are placed in landfill units that have specified liners. Wastes that meet these conditions will be exempted from the listing from their point of generation and will not be subject to any RCRA Subtitle C management requirements for generation, storage, transport, treatment or disposal. Generators will be required to maintain records on site to show that the waste meets the conditions of the listing.

2. Site Specific Inspection Checklist: A state developed checklist for inspectors was overwritten by a federal NESHAP rule. The State will reinsert the checklist requirements into the regulation to assist with compliance inspections. The location of the checklist will be at 270.10(m) since the federal provision was adopted at 270.10(l). This section will not introduce any new requirements, only replace a checklist that had previously been adopted and was overwritten by mistake.

3. The Federal Manifest System (FMS): The Manifest rule was adopted by the state to maintain federal compliance. The rule that was adopted into SC Hazardous Waste Management regulation changes the manifest process from a state initiative to a nationally standardized manifest. This rule was adopted to meet federal compliance and was not optional. The action in this package is to put the federal language into the state regulation verbatim instead of referencing the *Federal Register* in which the final rule was published. This will provide inspectors and the regulated community access to the requirements within the state regulations. No changes to the rule will be made.

### DETERMINATION OF COSTS AND BENEFITS:

1. The U.S. EPA promulgated three Final Rules to 40 CFR 260, 261, 264 and 266 between July 1, 2007 and June 30, 2008. The adoption of these three rules was optional to states. The Department amended R.61-79 to adopt these three rules to maintain conformity with federal regulations. The new rules will be less stringent than current state regulation. The determination of costs and benefits for each rule is as follows:

Rule (1). Petroleum refinery-based gasification units are currently in limited use in the US but this rule is an effort to develop positive economic returns. The process will use oil-bearing hazardous secondary materials, which achieves the resource recovery goals of RCRA without jeopardizing human health and the environment. Gasification is a recognized petroleum refining process and ensures a more efficient processing of crude oil. The process enables the petroleum refining industry to maximize the production of fuels and other commodities from crude oil while minimizing the waste products by capturing as much energy from a barrel of oil as possible to maximize production efficiencies at petroleum refineries in an energy constrained world. According to EPA, the savings that could be realized by the implementation of this rule depends on the savings petroleum refineries would experience by diverting oil-bearing hazardous secondary materials to gasification, thus avoiding waste management costs, which is the most significant share of the benefits of the rule. The other two benefits would be the use of these materials as a feedstock in the gasification system and indirect third party costs resulting from the use of virgin fuel. By using oil-bearing hazardous secondary materials, less virgin fuel would be required to produce the same amount of usable fuel. Approximately 342,300 tons of oil bearing hazardous secondary materials are generated by 152 refineries that would qualify for the exclusion annually. Of this quantity, approximately 205,5000 tons are sent offsite for disposal or recycling. The remaining 118,800 tons are processed onsite. The estimate is that between 123,300 and 177,000 tons are likely to be excluded each year from the waste stream, representing approximately 38 to 55 percent of the material eligible for the exclusion. This could yield between \$46.4 million and 48.7 million a year in net social benefits per year according to the EPA. Avoided waste management costs make up the most significant share of the benefits of this rule.

Rule (2). This NESHAP rule is an amendment to the October 2005 final rule and clarifies several compliance and monitoring provisions and corrects several omissions and typographical errors in the final rule. This rule is to facilitate compliance and improve understanding of the rule. The rule being clarified was adopted into the SC Hazardous Waste Management regulation and made final in June 2008. Only two corrections are being made to the SC Hazardous Waste Management regulation. The other corrections all relate to the air regulations.

Rule (3). This rule is proposing an exemption of F019, which is a wastewater sludge, generated from zinc phosphating used in the automobile and light truck assembly process. The exemption is specific to the motor vehicle manufacturing industry that incorporates aluminum into vehicle parts and bodies for the purpose of making them lighter weight and thus more capable of increasing gas mileage. By removing the regulatory controls under RCRA, EPA is facilitating the use of aluminum in motor vehicles. The incorporation of aluminum helps the environment because lighter weight vehicles are capable of increased fuel economy and decreased exhaust air emissions. This exemption will not affect any other wastewater treatment sludges. The wastes cannot be placed outside on the land prior to shipment to a landfill for disposal and the waste must be disposed of in a landfill unit meeting certain liner requirements. The generator is also required to maintain records on site to show that the waste meets the conditions of the listing. Because the sludge would no longer require RCRA Subtitle C management, costs savings would be realized by generators of this waste.

2. Site Specific Inspection Checklist: This checklist provides facilities a self-inspection/audit tool that is reviewed and approved by the Department, increasing the likelihood of the facility being compliant with the regulations and permit requirements. This process streamlines the inspection process because each facility will know in advance what will be inspected and will make the process more efficient for both the facilities and the inspectors, saving each significant time. Each facility is different and best equipped to know about its facility. When the inspector comes, this checklist serves to save time and resources because the facility has the opportunity in advance to see if the facility meets the criteria set forth on the checklist.

3. The Federal Manifest System (FMS): This rule has already been adopted for federal compliance and the insertion of the verbatim language is for the convenience of inspectors. The SC Hazardous Waste Management Regulation referred to the language as published in the *Federal Register* but inserting the verbatim language saves inspectors time by having all the information in the regulation. This rule was not optional but this

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amendment should make the verifying of the requirements more efficient and thus, saving departmental resources during an inspection.

### UNCERTAINTIES OF ESTIMATES:

No known uncertainties.

### EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

1. The U.S. EPA promulgated three Final Rules to 40 CFR 260, 261, 264 and 266 between July 1, 2007 and June 30, 2008. The adoption of these three rules is optional to states. The Department amended R.61-79 to adopt these three rules to maintain conformity with federal regulations. The new rules will be less stringent than current state regulation. The effect on the environment for the three rules is as follows:

Rule (1). The gasification process provides refineries with the ability to recycle materials generated in the refining of crude oil and provides for the recovery of additional hydrocarbons, which could be considered as an additional process in crude oil refining as a production operation rather than a waste treatment process. This would get the most benefit out of crude oil while maintaining environmental protections. The intent of RCRA would be met in that it would recover benefits of wastewater sludges that would otherwise be waste that has to be treated prior to disposal. There would be less residual waste and more resource recovery from one barrel of oil.

Rule (2). The NESHAP rule is for clarification and corrections to a previously adopted rule. The adoption of this rule would make sure the original rule is written as intended to promote the achievement of NESHAP.

Rule (3) The F019 exemption from wastewater sludge generated in the auto and light truck assembly process would benefit the environment by allowing the use of aluminum in the production of cars and light trucks, making them lighter, more fuel efficient and ultimately promoting cleaner air. There are environmental controls that would prevent the waste from being stored or disposed of in landfills without proper liners and the generators would be required to document their handling of this wastewater treatment sludge.

2. Site Specific Inspection Checklist: This checklist has been a tool for inspectors since 1993 when the state specific requirement was inserted into the SC Hazardous Waste Management Regulation. It was inadvertently removed, taking away a useful tool for inspections that streamlines the inspection process for both the facility and the Department to assure the facility is in compliance with the requirements that have been deemed necessary to protect the environment.

3. The Federal Manifest System (FMS): This is a federally mandated rule that is already in the regulation but the adding of the verbatim language assists inspectors in the field to assure facilities are complying with the Federal Manifest System.

### DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATIONS ARE NOT IMPLEMENTED:

1. The U.S. EPA promulgated three Final Rules to 40 CFR 260, 261, 264 and 266 between July 1, 2007 and June 30, 2008. The adoption of these three rules was optional to states. The Department amended R.61-79 to adopt these three rules to maintain conformity with federal regulations. The new rules will be less stringent than current state regulation. The detrimental effect on the environmental and public health if the regulations are not implemented is as follows:

Rule (1). If the gasification rule is not adopted, usable fuel from the wastewater sludges would be treated as waste and disposed of rather than extracting every bit of usable fuel out of a barrel of oil.

Rule (2). If the corrections to this previously adopted NESHAP rule is not adopted, there is room for misunderstanding of the intention of the original rule that is already part of the regulation, thus making a rule designed to protect the environment ineffective.

Rule (3). The exclusion of F019 as a waste treatment sludge makes it easier for the auto industry to use aluminum in the production of lighter weight autos and small trucks.

2. Site Specific Inspection Checklist: If this rule is not adopted, a tool that streamlines the inspection process and has been used since 1993 would no longer be available to inspectors, thus making the inspection process much more difficult and drawn out. The inspector would have to gather the information at the time of the inspection rather than having the facility as a partner in the inspection process.

3. The Federal Manifest System (FMS): This rule has already been adopted as part of the federally mandated Manifest System. If the verbatim language is not adopted, the inspection process is more complicated, leading to inspection oversights.

**Statement of Rationale:**

The three rules promulgated by EPA during the time frame of July 2007 to June 2008 are all optional for the states to adopt. The Department has chosen to adopt all three because of the environmental benefits and protections. The gasification rule will potentially maximize the utilization of a barrel of oil in an oil stressed economy. The NESHAP rule is part of a previously adopted rule included for corrections and clarification of the earlier rule. The F019 waste exemption will promote a technology that could benefit the environment by providing a means to the auto industry to make more fuel-efficient vehicles. The auto industry has already expressed support for this rule.

The other two items in this package include the insertion of the specific language for use of the national manifest system, which serves as a useful tool for inspectors and the regulated community. The last item is the reinsertion of the state specific requirement for a checklist, which was overwritten by a federal NESHAP provision. The reinsertion will provide inspectors with a tool for evaluating facilities.

Document No. 4122

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

Statutory Authority: 1976 Code Sections 48-1-10 et seq.

61-62. Air Pollution Control Regulations and Standards

**Synopsis:**

The Department of Health and Environmental Control (Department) has amended R. 61-62.96, Nitrogen Oxides (NO<sub>x</sub>) and Sulfur Dioxide (SO<sub>2</sub>) Budget Trading Program, and the State Implementation Plan (SIP) to address the outstanding requests made by the EPA in order to obtain full SIP approval. These revisions address the requirements of the CAIR NO<sub>x</sub> Annual Allowance Allocations, the requirements of recordation of the CAIR NO<sub>x</sub> Annual Allowance Allocations, the definition of "fossil-fuel-fired," the definition of "Non-EGU Applicability," the timing requirements of the CAIR NO<sub>x</sub> Ozone Season Allocations, the requirements of the CAIR NO<sub>x</sub> Ozone Seasons Allowance Allocations, and the requirements of recordation of the CAIR NO<sub>x</sub> Ozone Season Allowances. The Department has also made typographical corrections and clarifications to R. 61-62.96.

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### Discussion of Revisions:

#### SECTION CITATION/EXPLANATION OF CHANGE:

ENTIRE R. 61-62.96

Regulation, 61-62.96, Nitrogen Oxides (NO<sub>x</sub>) and Sulfur Dioxide (SO<sub>2</sub>) Budget Trading Program:  
Entire regulation is revised for consistent use of the section symbol (“§”).

#### GENERAL PROVISIONS

Regulation, 61-62.96, General Provisions:

This section is revised to move “General Provisions” down one line for clarity. It is not part of the title of R. 61-62.96.

#### SUBPART EE - “CAIR NO<sub>x</sub> ALLOWANCE ALLOCATIONS”

Regulation, 61-62. Section 96.142 CAIR NO<sub>x</sub> Allowance Allocations:

Paragraph (a)(1)(ii) is revised to add “first year of the” between “the” and “control.”

Regulation, 61-62. Section 96.142 CAIR NO<sub>x</sub> Allowance Allocations:

Paragraph (a)(2) is revised to capitalize the “p” in “part” in three places.

Regulation, 61-62. Sections 96.143 Compliance Supplement Pool:

Paragraphs (b)(1) and (2) are revised to capitalize the “p” in “part” in three places.

#### SUBPART FF - “CAIR NO<sub>x</sub> ALLOWANCE TRACKING SYSTEM”

Regulation, 61-62.96, Section 96.153 Recordation of CAIR NO<sub>x</sub> Allowance Allocations:

This subsection is revised to add the process by which EPA records CAIR NO<sub>x</sub> allowances.

#### SUBPART AAAA - “CAIR NO<sub>x</sub> OZONE SEASON TRADING PROGRAM”

Regulation, 61-62.96 Section 96.302 Definitions:

Definitions: “Commence commercial operation” is revised to clarify that a unit’s date of commencement of operation shall also be its date of commencement of commercial operation.

Regulation, 61-62.96 Section 96.302 Definitions:

The definition of “non-Electric Generating Unit” is revised to capitalize the “n” in “non.”

Regulation, 61-62.96 Section 96.302 Definitions:

The definition of “Commence operation” is revised to replace capital “S” in “Section” with a lower-case “s.”

Regulation, 61-62.96 Section 96.302 Definitions:

Subsection is revised to remove the stipulation that units begin operation on or after January 1, 1996, for the definition of “fossil-fuel-fired” to apply.

Regulation, 61-61.96 Section 96.302 Definitions:

The definition of “Unit” is revised to include the word “section” before “96.304” in two places.

Regulation, 61-62.96 Section 96.304 Applicability, at 304(a)(1)(ii):

Subsection is revised to clarify the applicability of Non-EGUs to the CAIR and remove the applicability of units with a maximum heat input greater than 250 mmBtu/hr that have not served a generator that produced

electricity for sale or if that generator has a nameplate capacity of 25 MWe or less and has the potential to use no more than 50 percent of the potential electrical output of the unit.

SUBPART EEEE – “CAIR NO<sub>x</sub> OZONE SEASON ALLOWANCE ALLOCATIONS

Regulation, 61-62.96 Section 96.341 Timing requirements for CAIR NO<sub>x</sub> Ozone Season Allowance Allocations:

Paragraph (b)(2) is revised to correct a typographical error by changing “2008” to “2009.”

Regulation, 61.96 Section 96.342 CAIR NO<sub>x</sub> Ozone Season Allowance Allocations:

Paragraph (a)(1)(i) is revised to add an “s” to “period.”

Regulation, 61-62.96 Section 96.342 CAIR NO<sub>x</sub> Ozone Season Allowance Allocations:

Paragraph (a)(2) is revised to capitalize the “p” in “part” in four places.

Regulation, 61-62.96 Section 96.342 CAIR NO<sub>x</sub> Ozone Season Allowance Allocations:

Paragraph (b)(3) is revised to remove a regulation citation and add explanation.

Regulation, 61-62.96 Section 96.342 CAIR NO<sub>x</sub> Ozone Season Allowance Allocations:

Paragraph (e)(3) is revised to capitalize the “p” in “part” in three places.

Regulation, 61-62.96 Section 96.342 CAIR NO<sub>x</sub> Ozone Season Allowance Allocations:

Paragraph (g)(2) is revised to add “commercial” between “commences” and “operation.”

SUBPART FFFF - “NO<sub>x</sub> OZONE SEASON ALLOWANCE TRACKING SYSTEM”

Regulation, 61-62.96 Section 96.353 Recordation of NO<sub>x</sub> Ozone Season Allowance Allocations:

The subsection is revised to add the process by which the EPA records CAIR NO<sub>x</sub> Ozone Season Allowance Allocations, with 3 new paragraphs, a, b, and d. Paragraph c is moved to between b and d.

**Instructions:**

Amend Regulation 61-62, Air Pollution Control Regulations and Standards, pursuant to each individual instruction provided below with the text of the amendments.

**Text:**

*Regulation 61-62.96, General Provisions, shall be revised as follows:*

**Regulation 61-62.96 Nitrogen Oxides (NO<sub>x</sub>) and Sulfur Dioxide (SO<sub>2</sub>)  
Budget Trading Program**

**General Provisions**

*Regulation 61-62.96, Subpart EE, section 96.142(a)(1)(ii) shall be revised as follows:*

(ii) For a CAIR NO<sub>x</sub> allowance allocation under section 96.141(b), the allowances will be determined using the unit’s baseline heat input equal to the unit’s single highest adjusted control period heat input for the years that are five, six, seven and eight years before the first year of the control periods for which the CAIR NO<sub>x</sub> annual allowance allocation is being calculated with the adjusted control period heat input for each year calculated as follows:

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***Regulation 61-62.96, Subpart EE, section 96.142(a)(2) shall be revised as follows:***

(2) A unit's control period heat input, and a unit's status as coal-fired, for a calendar year under paragraph (a)(1)(i) of this section, and a unit's total tons of NO<sub>x</sub> emissions during a calendar year under paragraph (c)(3) of this section, will be determined in accordance with 40 CFR Part 75, to the extent the unit was otherwise subject to the requirements of 40 CFR Part 75 for the year, or will be based on the best available data reported to the Department for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR Part 75 for the year. Heat input data under 40 CFR Part 75 will be obtained from the Administrator.

***Regulation 61-62.96, Subpart EE, sections 96.143(b)(1) and (2) shall be revised as follows:***

(1) The owners and operators of such CAIR NO<sub>x</sub> units shall monitor and report the NO<sub>x</sub> emissions rate and the heat input of the unit in accordance with Part 96 subpart HH of this regulation in each control period for which early reduction credit is requested.

(2) The CAIR designated representative of such CAIR NO<sub>x</sub> unit shall submit to the Department by May 1, 2009, a request, in a format specified by the Department, for allocation of an amount of CAIR NO<sub>x</sub> allowances from the compliance supplement pool not exceeding the sum of the amounts (in tons) of the unit's NO<sub>x</sub> emission reductions in 2007 and 2008 that are not necessary to comply with any State or Federal emissions limitation applicable during such years, determined in accordance with Part 96 subpart HH of this regulation.

***Regulation 61-62.96, Subpart FF, section 96.153, shall be revised as follows:***

*The following State modifications are being made in R.61-62.96.153 to section 96.153 of 70 FR 25161:*

(a) By September 30, 2007, the Administrator will record in the CAIR NO<sub>x</sub> source's compliance account the CAIR NO<sub>x</sub> allowances allocated for the CAIR NO<sub>x</sub> units at the source, as submitted by the permitting authority in accordance with section 96.141(a), for the control periods in 2009, 2010, 2011, and 2012.

(b) By December 1, 2009, the Administrator will record in the CAIR NO<sub>x</sub> source's compliance account the CAIR NO<sub>x</sub> allowances allocated for the CAIR NO<sub>x</sub> units at the source, as submitted by the permitting authority in accordance with section 96.141(b), for the control period in 2013, 2014, 2015, and 2016.

(c) By December 1, 2013, and December 1 of each year thereafter, the Administrator will record in the CAIR NO<sub>x</sub> source's compliance account the CAIR NO<sub>x</sub> allowances allocated for the CAIR NO<sub>x</sub> units at the source, as submitted by the permitting authority in accordance with section 96.141(b), for the control period in the fourth, fifth, sixth, and seventh years after the year of the applicable deadline for recordation under this paragraph.

***Regulation 61-62.96, Subpart AAAA, section 96.302, Definitions, "Commence commercial operation" shall be revised as follows:***

*The following State modifications to definitions are being made in R. 61-62.96.302 to section 96.302 of 70 FR 25161:*

"Commence commercial operation" - (a) For all units "commence commercial operation" means, with regard to a unit:

(1) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in section 96.305 and section 96.384(h).

(i) For a unit that is a CAIR NO<sub>x</sub> Ozone Season unit under section 96.304 on the later of November 15, 1990, or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

(ii) For a unit that is a CAIR NO<sub>x</sub> Ozone Season unit under section 96.304 on the later of November 15, 1990, or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.

(2) Notwithstanding paragraph (1) of this definition and except as provided in section 96.305, for a unit that is not a CAIR NO<sub>x</sub> Ozone Season unit under section 96.304 on the later of November 15, 1990, or the date the unit commences commercial operation as defined in paragraph (1) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR NO<sub>x</sub> Ozone Season unit under section 96.304.

(3) Notwithstanding paragraphs (1) and (2) of this definition, for a unit not serving a generator producing electricity for sale, the unit's date of commencement of operation shall also be the unit's date of commencement of commercial operation.

***Regulation 61-62.96, Subpart AAAA, section 96.302, Definitions “non-Electric Generating Unit” or “non-EGU,” shall be revised as follows:***

“Non-Electric Generating Unit” or “Non-EGU” – any unit subject to this regulation as specified in section 96.304 (a)(1)(ii).

***Regulation 61-62.96, Subpart AAAA, section 96.302, Definitions, “Commence operation” shall be revised as follows:***

“Commence operation” - (a) For all units “commence operation” means:

(b) Notwithstanding paragraph (a) of this definition and solely for purposes of 40 CFR Part 96, subpart HHHH, for a unit that is not a CAIR NO<sub>x</sub> Ozone Season unit under section 96.304(a)(1)(ii) on the later of November 15, 1990, or the date the unit commences operation as defined in paragraph (a)(1), (2), or (3) of this definition and that subsequently becomes such a CAIR NO<sub>x</sub> Ozone Season unit, the unit's date of commencement of operation shall be the date on which the unit becomes a CAIR NO<sub>x</sub> Ozone Season unit under section 96.304(a)(1)(ii).

(1) For a unit with a date of commencement of operation as defined in paragraph (b) of this definition that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.

(2) For a unit with a date of commencement of operation as defined in paragraph (b) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (a) or (b) of this definition as appropriate.

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**Regulation 61-62.96, Subpart AAAA, section 96.302, Definitions, “Fossil-fuel-fired”(b)(2) shall be revised as follows:**

*The following State modifications are being made in R. 61-62.96.302 to section 96.302 of 70 FR 25162:*

(2) The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50 percent of the annual heat input on a Btu basis during any year, provided that during such year, the unit shall be “fossil-fuel-fired” as of the date upon which the unit begins combusting fossil fuel.

**Regulation 61-62.96, Subpart AAAA, section 96.302, Definitions, “Unit” shall be revised as follows:**

“Unit” - (a) For a unit subject to section 96.304 (a)(1)(i), (a)(2), or (b), “unit” means a stationary, fossil-fuel-fired boiler or combustion turbine or other stationary, fossil-fuel-fired combustion device.

(b) For a unit subject to section 96.304 (a)(1)(ii), “unit” means a fossil-fuel-fired stationary boiler, combustion turbine, or combined cycle system.

**Regulation 61-62.96, Subpart AAAA, sections 96.304(a)(1)(ii)(A) and 304(a)(1)(ii)(B), shall be revised as follows:**

### **Section 96.304 Applicability.**

*The following State modifications are being made in R. 61-62.96.304 to section 96.304 of 70 FR 25161:*

(a) Except as provided in paragraph (b) of this section,

(1) The following units in the State shall be CAIR NO<sub>x</sub> Ozone Season units, and any source that includes one or more such units shall be a CAIR NO<sub>x</sub> Ozone Season source, subject to the requirements of this subpart and subparts BBBB through HHHH of this part:

(i) **EGU Applicability:** Any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990, or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

#### (ii) **Non-EGU Applicability:**

(A) Any unit that is not a unit under paragraph (a)(1)(i) of this section and at any time on or after January 1, 1995, serves a generator with a nameplate capacity greater than 25 MWe and sells any amount of electricity; or

(B) Any unit that is not a unit under paragraph (a)(1)(i) of this section and that has a maximum design heat input greater than 250 mmBTU/hr.

**Regulation 61-62.96, Subpart EEEE, section 96.341(b)(2) shall be revised as follows:**

(2) By October 31, 2009, and October 31 of every fourth year thereafter, the Department will submit to the Administrator the CAIR NO<sub>x</sub> Ozone Season allowance allocations, in a format prescribed by the Administrator and in accordance with section 96.342(e) and (f), for the control periods in the fourth, fifth, sixth and seventh years after the year of the applicable deadline for submission under this paragraph.

***Regulation 61-62.96, Subpart EEEE, section 96.342(a)(1)(i) shall be revised as follows:***

(i) The allowances for the control periods 2009 through 2012 will be determined using the unit's baseline heat input equal to the unit's single highest adjusted control period heat input for the years 2002 through 2005 for the control periods for which the CAIR NO<sub>x</sub> Ozone Season allowance allocation is being calculated with the adjusted control period heat input for each year calculated as follows:

***Regulation 61-62.96, Subpart EEEE, section 96.342(a)(2) shall be revised as follows:***

(2) A unit's control period heat input, and a unit's status as coal-fired, for a calendar year under paragraph (a)(1)(i) of this section, and a unit's total tons of NO<sub>x</sub> emissions during a control period in a calendar year under paragraph (c)(3) of this section, will be determined in accordance with 40 CFR Part 75, to the extent the unit was otherwise subject to the requirements of 40 CFR Part 75 for the year, or will be based on the best available data reported to the Department for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR Part 75 for the year. Heat input data under 40 CFR Part 75 will be obtained from the Administrator.

***Regulation 61-62.96, Subpart EEEE, section 96.342(b)(3) shall be revised as follows:***

(3) CAIR NO<sub>x</sub> allocations for the 2009 ozone season can be used for the excess penalty deductions for the 2008 control period of the NO<sub>x</sub> SIP Call Trading Program that this Regulation replaced on April 30, 2009.

***Regulation 61-62.96, Subpart EEEE, section 96.342(e)(3) shall be revised as follows:***

(3) The unit's total heat input for the control period in each year specified under paragraph (e) will be determined in accordance with 40 CFR Part 75 to the extent the unit was otherwise subject to the requirements of 40 CFR Part 75 for the year, or will be based on the best available data reported to the Department for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR Part 75 for the year. Heat input data under 40 CFR Part 75 will be obtained from the Administrator.

***Regulation 61-62.96, Subpart EEEE, section 96.342(g)(2) shall be revised as follows:***

(2) The CAIR designated representative of such a CAIR NO<sub>x</sub> Ozone Season unit may submit to the Department a request, in a format specified by the Department, to be allocated CAIR NO<sub>x</sub> Ozone Season allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO<sub>x</sub> Ozone Season unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO<sub>x</sub> Ozone Season allowances under paragraph (h) of this section. The CAIR NO<sub>x</sub> Ozone Season allowance allocation request must be submitted on or before February 1 before the first control period for which the CAIR NO<sub>x</sub> Ozone Season allowances are requested and after the date on which the CAIR NO<sub>x</sub> Ozone Season unit commences commercial operation.

***Regulation 61-62.96, Subpart FFFF, section 96.353, shall be revised as follows:***

*The following State modifications are being made in 61-62.96.353 to section 96.353 of 70 FR 25161:*

(a) By September 30, 2007, the Administrator will record in the CAIR NO<sub>x</sub> Ozone Season source's compliance account the CAIR NO<sub>x</sub> Ozone Season allowances allocated for the CAIR NO<sub>x</sub> Ozone Season units at the source, as submitted by the permitting authority in accordance with section 96.341(a)(1) and (b)(1), for the control periods in 2009, 2010, 2011, and 2012.

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(b) By December 1, 2009, the Administrator will record in the CAIR NO<sub>x</sub> Ozone Season source's compliance account the CAIR NO<sub>x</sub> Ozone Season allowances allocated for the CAIR NO<sub>x</sub> Ozone Season units at the source, as submitted by the permitting authority in accordance with section 96.341(a)(2) and (b)(2), for the control period in 2013, 2014, 2015, and 2016.

(c) By December 1, 2010 and December 1 of each fourth year thereafter, the Administrator will record in the CAIR NO<sub>x</sub> Ozone Season source's compliance account the CAIR NO<sub>x</sub> Ozone Season allowances allocated for the CAIR NO<sub>x</sub> Ozone Season units at the source, as submitted by the permitting authority in accordance with section 96.341(b), for the control period in the sixth year after the year of the applicable deadline for recordation under this paragraph.

(d) By September 1, 2009, and September 1 of each year thereafter, the Administrator will record in the CAIR NO<sub>x</sub> Ozone Season source's compliance account the CAIR NO<sub>x</sub> Ozone Season allowances allocated for the CAIR NO<sub>x</sub> Ozone Season units at the source, as submitted by the permitting authority in accordance with section 96.341(a)(3) and (b)(3), for the control period in the year of the applicable deadline for recordation under this paragraph.

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

This 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:** Amendments to Regulation 61-62.96, Nitrogen Oxides (NO<sub>x</sub>) and Sulfur Dioxide (SO<sub>2</sub>) Budget Trading Program, and the South Carolina State Implementation Plan (SIP).

**Purpose:** These amendments will maintain conformity with Federal requirements and ensure compliance with Federal standards pursuant to 40 CFR 96.

**Legal Authority:** The legal authority for R. 61-62.96, Nitrogen Oxides (NO<sub>x</sub>) and Sulfur Dioxide (SO<sub>2</sub>) Budget Trading Program, is S.C. Code Section 48-1-10 et seq.

**Plan for Implementation:** The amendments will take effect upon approval and adoption by the South Carolina Board of Health and Environmental Control and publication in the State Register.

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

These revisions have been promulgated in order to fully comply with a Federal mandate requiring states to lower emissions of nitrous oxides, sulfur dioxide, and mercury. Scientific studies have shown that nitrous oxides are a precursor to ozone and particulate matter, and that these pollutants have serious negative health consequences to the public. These include lung damage, aggravated asthma, and premature death.

These amendments will amend Regulation 61-62.96, Nitrogen Oxides (NO<sub>x</sub>) and Sulfur Dioxide (SO<sub>2</sub>) Budget Trading Program and the SIP to address the remaining requests made by the EPA in order to obtain full SIP approval. See Preamble and Discussion of Revisions.

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

There will be no increased cost to the State or its political subdivisions resulting from this revision. This action will enable full EPA approval of South Carolina's CAIR SIP.

UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates relative to the costs to the State or its political subdivisions.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

By implementing this rule, the Department will be able to obtain full EPA approval of South Carolina's CAIR SIP.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATIONS ARE NOT IMPLEMENTED:

Without the revision, the Department would not be able to obtain full EPA approval of South Carolina's CAIR SIP.

Document No. 4098  
**DEPARTMENT OF INSURANCE**  
CHAPTER 69

Statutory Authority: 1976 Code Sections 38-3-110, 38-13-80, 38-90-150 and 38-90-630

69-70. Annual Audited Financial Reporting Regulation

**Synopsis:**

This regulation requires insurers and designated entities to comply with certain best practices related to auditor independence, corporate governance, and internal controls over financial reporting. The proposed amendments to the regulation will provide clarification of the application of the regulation to certain captive insurance companies and will provide a definition of the term "captive insurer" as used in the regulation. The amendments clarify that for purposes of determining insurers subject to the regulation all premiums written or assumed by a captive insurer shall be deemed to be written in this state. The amendments also clarify that in the case of a conflict between a provision of Regulation 69-60 and this regulation, this regulation will control. The regulation authorizes the Director to require a captive not otherwise subject to this regulation to comply with any provision of the regulation and details the factors that the Director may consider. The amendments also set forth the date that the Audited Financial Report is due which is on or before the date six months after the company's fiscal year end.

A scrivener's error in Section 14.A (2) will also be corrected.

A Notice of Drafting for the proposed regulation was published in the *State Register* on August 28, 2009.

**Instructions:**

Amend Regulation 69-70 as drafted below and add to the South Carolina Code of Regulations.

**Text**

69-70. Annual Audited Financial Reporting Regulation.

Section 1. Authority

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This regulation is promulgated by the Director of Insurance (Director) of the South Carolina Department of Insurance (Department) pursuant to Sections 38-3-110, 38-13-80, 38-90-150 and 38-90-630 of the South Carolina Code of Laws.

### Section 2. Purpose and Scope

A. The purpose of this regulation is to improve the Department's surveillance of the financial condition of insurers, as defined in Section 3, by requiring (1) an annual audit of financial statements reporting the financial position and the results of operations of insurers by independent certified public accountants, (2) Communication of Internal Control Related Matters Noted in an Audit, and (3) Management's Report of Internal Control over Financial Reporting.

B. Every insurer shall be subject to this regulation. Insurers having direct premiums written in this state of less than \$1,000,000 in any calendar year and less than 1,000 policyholders or certificateholders of direct written policies nationwide at the end of the calendar year shall be exempt from this regulation for the year (unless the Director makes a specific finding that compliance is necessary for the Director to carry out statutory responsibilities) except that insurers having assumed premiums pursuant to contracts and/or treaties of reinsurance of \$1,000,000 or more will not be so exempt. For purposes of this subsection, all premiums written or assumed by a captive insurer shall be deemed to be written in this state.

C. Foreign or alien insurers filing the Audited Financial Report in another state, pursuant to that state's requirement for filing of Audited Financial Reports, which has been found by the Director to be substantially similar to the requirements herein, are exempt from Sections 4 through 13 of this regulation if:

(1) A copy of the Audited Financial Report, Communication of Internal Control Related Matters Noted in an Audit, and the Accountant's Letter of Qualifications that are filed with the other state are filed with the Director in accordance with the filing dates specified in Sections 4, 11 and 12, respectively (Canadian insurers may submit accountants' reports as filed with the Office of the Superintendent of Financial Institutions, Canada).

(2) A copy of any Notification of Adverse Financial Condition Report filed with the other state is filed with the Director within the time specified in Section 10.

D. Foreign or alien insurers required to file Management's Report of Internal Control over Financial Reporting in another state are exempt from filing the Report in this state provided the other state has substantially similar reporting requirements and the Report is filed with the commissioner of the other state within the time specified.

E. This regulation shall not prohibit, preclude or in any way limit the Director from ordering or conducting or performing examinations of insurers under the rules and regulations of the Department and the practices and procedures of the Department.

F. (1) Except as otherwise provided in this subsection, this regulation shall not apply to captive insurance companies other than captive insurers as defined in Section 3(A)(5). In the case of a conflict between a provision of Regulation 69-60 and a provision of this regulation, the latter controls.

(2) The Director may, by written notice, require a captive insurance company that is not otherwise subject to this regulation to comply with any provision or requirement of this regulation by making a specific finding that compliance is necessary for the Director to carry out statutory responsibilities. In arriving at this finding, the Director may consider the captive insurance company's business plan, including the nature of the risks insured, and other factors the Director considers advisable. Such a notice may be issued at any time and from time to time for a specified period or periods. Within thirty days from issuance of the notice, the captive insurance company may request in writing a hearing, pursuant to statute, on the requirement for compliance. The hearing shall be held in accordance with South Carolina law pertaining to administrative hearing procedures.

(3) Notwithstanding any provision of this regulation to the contrary, a captive insurance company made subject to this regulation by written notice pursuant to Section 2(F)(2) shall file its Audited Financial Report on or before the date that is six months following the last day of the captive insurance company's fiscal year end, provided that the Director may require an earlier filing than such date with ninety days advance notice to the captive insurance company. Extensions of the filing date may be granted by the Director for thirty-day periods upon a showing by the captive insurance company and its independent certified public accountant of

the reasons for requesting an extension and determination by the Director of good cause for an extension. The request for extension must be submitted in writing not less than ten days prior to the due date in sufficient detail to permit the Director to make an informed decision with respect to the requested extension. If an extension of the filing date is granted, a similar extension of thirty days is granted to the filing of Management's Report of Internal Control over Financial Reporting.

(4) Every captive insurance company required to file an annual Audited Financial Report by written notice pursuant to Section 2(F)(2) shall designate a group of individuals as constituting its Audit Committee, as defined in Section 3(A)(3). The Audit Committee of an entity that controls the captive insurance company may be deemed to be the captive insurance company's Audit Committee for purposes of this regulation at the election of the controlling person.

### Section 3. Definitions

A. The terms and definitions contained herein are intended to provide definitional guidance as the terms are used within this regulation.

(1) "Accountant" or "independent certified public accountant" means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants (AICPA) and in all states in which he or she is licensed to practice; for Canadian and British companies, it means a Canadian-chartered or British-chartered accountant.

(2) "Affiliate" of a specific person or a person "affiliated" with a specific person means a person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with the specific person.

(3) "Audit Committee" means a committee (or equivalent body) established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or group of insurers, and audits of financial statements of the insurer or group of insurers. The Audit Committee of any entity that controls a group of insurers may be deemed to be the Audit Committee for one or more of these controlled insurers solely for the purposes of this regulation at the election of the controlling person. Refer to Section 14(A)(5) for exercising this election. If an Audit Committee is not designated by the insurer, the insurer's entire board of directors shall constitute the Audit Committee.

(4) "Audited Financial Report" means and includes those items specified in Section 5 of this regulation.

(5) "Captive insurer" means any captive insurance company licensed as a risk retention group, South Carolina coastal captive insurance company, special purpose financial captive, or other captive insurance company made subject to this regulation by written notice pursuant to Section 2(F)(2).

(6) "Indemnification" means an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing of other misrepresentations made by the insurer or its representatives.

(7) "Independent board member" has the same meaning as described in Section 14(A)(3).

(8) "Insurer" includes any captive insurer as defined in Section 3(A)(5), health maintenance organization, title insurer, fraternal organization, burial association, other association, corporation, partnership, society, order, individual, or aggregation of individuals engaging or proposing or attempting to engage as principals in any kind of insurance or surety business, including the exchanging of reciprocal or interinsurance contracts between individuals, partnerships, and corporations.

(9) "Group of insurers" means those licensed insurers included in the reporting requirements of Title 38, Chapter 21 - Insurance Holding Company Regulatory Act, or a set of insurers as identified by management, for the purpose of assessing the effectiveness of internal control over financial reporting.

(10) "Internal control over financial reporting" means a process effected by an insurer's board of directors, management and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements, i.e., those items specified in Section 5(B)(2) through 5(B)(7) of this regulation and includes those policies and procedures that:

(a) Pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets;

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(b) Provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements, i.e., those items specified in Section 5(B)(2) through 5(B)(7) of this regulation and that receipts and expenditures are being made only in accordance with authorizations of management and directors; and

(c) Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets that could have a material effect on the financial statements, i.e., those items specified in Section 5(B)(2) through 5(B)(7) of this regulation.

(11) "SEC" means the United States Securities and Exchange Commission.

(12) "Section 404" means Section 404 of the Sarbanes-Oxley Act of 2002 (15 USC Section 7201 et seq.) and the SEC's rules and regulations promulgated thereunder.

(13) "Section 404 Report" means management's report on "internal control over financial reporting" as defined by the SEC and the related attestation report of the independent certified public accountant as described in Section 3(A)(1).

(14) "SOX Compliant Entity" means an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002 (15 USC Section 7201 et seq.): (i) the pre-approval requirements of Section 201 (Section 10A(i) of the Securities Exchange Act of 1934) (15 USC Section 78a et seq.); (ii) the Audit Committee independence requirements of Section 301 (Section 10A(m)(3) of the Securities Exchange Act of 1934 (15 USC Section 78a et seq.)); and (iii) the internal control over financial reporting requirements of Section 404 (Item 308 of SEC Regulation S-K).

### Section 4. General Requirements Related to Filing and Extensions for Filing of Annual Audited Financial Reports and Audit Committee Appointment

A. All insurers shall have an annual audit by an independent certified public accountant and shall file an Audited Financial Report with the Director on or before June 1 for the year ended December 31 immediately preceding. The Director may require an insurer to file an Audited Financial Report earlier than June 1 with ninety days advance notice to the insurer.

B. Extensions of the June 1 filing date may be granted by the Director for thirty-day periods upon a showing by the insurer and its independent certified public accountant of the reasons for requesting an extension and determination by the Director of good cause for an extension. The request for extension must be submitted in writing not less than ten days prior to the due date in sufficient detail to permit the Director to make an informed decision with respect to the requested extension.

C. If an extension is granted in accordance with the provisions in Section 4(B), a similar extension of thirty days is granted to the filing of Management's Report of Internal Control over Financial Reporting.

D. Every insurer required to file an annual Audited Financial Report pursuant to this regulation shall designate a group of individuals as constituting its Audit Committee, as defined in Section 3. The Audit Committee of an entity that controls an insurer may be deemed to be the insurer's Audit Committee for purposes of this regulation at the election of the controlling person.

E. This section does not apply to a captive insurance company made subject to this regulation by written notice pursuant to Section 2(F)(2). Such a captive insurance company shall comply with the requirements of Section 2(F)(3) and 2(F)(4).

### Section 5. Contents of Annual Audited Financial Report

A. The annual Audited Financial Report shall report the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flow, and changes in capital and surplus for the year then ended in conformity with statutory accounting practices prescribed, or otherwise permitted, by the insurer's state of domicile.

B. The annual Audited Financial Report shall include the following:

- (1) Report of independent certified public accountant;
- (2) Balance sheet reporting admitted assets, liabilities, capital and surplus;
- (3) Statement of operations;
- (4) Statement of cash flow;

(5) Statement of changes in capital and surplus;

(6) Notes to financial statements. These notes shall be those required by the appropriate NAIC Annual Statement Instructions and the NAIC Accounting Practices and Procedures Manual. The notes shall include a reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to Section 38-13-80 of the South Carolina Code of Laws with a written description of the nature of these differences;

(7) The financial statements included in the Audited Financial Report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the Director, and the financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. However, in the first year in which an insurer is required to file an Audited Financial Report, the comparative data may be omitted.

#### Section 6. Designation of Independent Certified Public Accountant

A. Each insurer required by this regulation to file an annual Audited Financial Report, within sixty days after becoming subject to the requirement, shall register with the Director in writing the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit set forth in this regulation. Insurers not retaining an independent certified public accountant on the effective date of this regulation shall register the name and address of their retained independent certified public accountant not less than six months before the date when the first Audited Financial Report is to be filed.

B. The insurer shall obtain a letter from the accountant and file a copy with the Director stating that the accountant is aware of the provisions of the insurance code and the regulations of the insurance department of the state of domicile that relate to accounting and financial matters and affirming that the accountant will express an opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by that insurance department, specifying such exceptions as the accountant may believe appropriate.

C. If the accountant who was the insurer's accountant for the immediately preceding filed Audited Financial Report is dismissed or resigns, the insurer shall notify the Director within five business days of this event. The insurer shall also furnish the Director with a separate letter within ten business days of the above notification stating whether in the twenty-four months preceding the event there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which, if not resolved to the satisfaction of the former accountant, would have caused the accountant to make reference to the subject matter of the disagreement in connection with the opinion. The disagreements required to be reported in response to this section include those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this section are those that occur at the decision-making level, i.e., between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report. The insurer also in writing shall request the former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for the disagreement; and the insurer shall furnish the responsive letter from the former accountant to the Director together with its own.

#### Section 7. Qualifications of Independent Certified Public Accountant

A. The Director shall not recognize a person or firm as a qualified independent certified public accountant if the person or firm:

(1) Is not in good standing with the AICPA and in all states in which the accountant is licensed to practice, or, for a Canadian or British company, that is not a chartered accountant; or

(2) Has either directly or indirectly entered into an agreement of indemnity or release from liability, collectively referred to as indemnification, with respect to the audit of the insurer.

B. Except as otherwise provided in this regulation, the Director shall recognize an independent certified public accountant as qualified as long as the accountant conforms to the standards of the profession, as

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contained in the AICPA Code of Professional Conduct and the regulations of the South Carolina Board of Accountancy, or similar code.

C. A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. However, in the event of a delinquency proceeding commenced against the insurer under Chapter 27 of Title 38 of the South Carolina Code of Laws, the mediation or arbitration provisions shall operate at the option of the statutory successor.

D. The lead or coordinating audit partner having primary responsibility for the audit may not act in that capacity for more than five consecutive years. The person shall be disqualified from acting in that or a similar capacity for the same insurer or its insurance subsidiaries or affiliates for a period of five consecutive years. An insurer may make application to the Director for relief from the above rotation requirement on the basis of unusual circumstances. This application should be made at least thirty days before the end of the calendar year. The Director may consider the following factors in determining if the relief should be granted:

- (1) Number of partners, expertise of the partners or the number of insurance clients in the currently registered firm;
- (2) Premium volume of the insurer; or
- (3) Number of jurisdictions in which the insurer transacts business.

E. The insurer shall file, with its annual statement filing, the approval for relief from Subsection D with the states that it is licensed in or doing business in and with the NAIC. If the non-domestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC. A captive insurer is not required to file the approval for relief from Subsection D with the NAIC if the captive insurer is not required to file its annual statement with the NAIC.

F. The Director shall not recognize as a qualified independent certified public accountant or accept any annual Audited Financial Report prepared in whole or in part by any person who:

- (1) Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Section 1961 et seq., or any dishonest conduct or practices under federal or state law;
- (2) Has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this regulation; or
- (3) Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this regulation.

G. The Director, pursuant to statute, may hold a hearing to determine whether an independent certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing his or her opinion on the financial statements in the annual Audited Financial Report made pursuant to this regulation and require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of this regulation.

H. The Director shall not recognize as a qualified independent certified public accountant or accept an annual Audited Financial Report prepared in whole or in part by an accountant who provides to an insurer, contemporaneously with the audit, the following non-audit services:

- (1) Bookkeeping or other services related to the accounting records or financial statements of the insurer;
- (2) Financial information systems design and implementation;
- (3) Appraisal or valuation services, fairness opinions, or contribution-in-kind reports;
- (4) Actuarially-oriented advisory services involving the determination of amounts recorded in the financial statements. The accountant may assist an insurer in understanding the methods, assumptions and inputs used in the determination of amounts recorded in the financial statement only if it is reasonable to conclude that the services provided will not be subject to audit procedures during an audit of the insurer's financial statements. An accountant's actuary may also issue an actuarial opinion or certification ("opinion") on an insurer's reserves if the following conditions have been met:
  - (a) Neither the accountant nor the accountant's actuary has performed any management functions or made any management decisions;
  - (b) The insurer has competent personnel (or engages a third-party actuary) to estimate the reserves for which management takes responsibility; and
  - (c) The accountant's actuary tests the reasonableness of the reserves after the insurer's management has determined the amount of the reserves;

- (5) Internal audit outsourcing services;
- (6) Management functions or human resources;
- (7) Broker or dealer, investment adviser, or investment banking services;
- (8) Legal services or expert services unrelated to the audit; or
- (9) Any other services that the Director determines, by regulation, are impermissible.

I. In general, the principles of independence with respect to services provided by the qualified independent certified public accountant are largely predicated on three basic principles, violations of which would impair the accountant's independence. The principles are that the accountant cannot function in the role of management, cannot audit their own work, and cannot serve in an advocacy role for the insurer.

J. Insurers having direct written and assumed premiums of less than \$100,000,000 in any calendar year may request an exemption from Subsection H. The insurer shall file with the Director a written statement discussing the reasons why the insurer should be exempt from these provisions. An exemption may be granted if the Director finds, upon review of this statement, that compliance with this regulation would constitute a financial or organizational hardship upon the insurer.

K. A qualified independent certified public accountant who performs the audit may engage in other non-audit services, including tax services, that are not described in Subsection H or that do not conflict with Subsection I, only if the activity is approved in advance by the Audit Committee, in accordance with Subsection L.

L. All auditing services and non-audit services provided to an insurer by the qualified independent certified public accountant of the insurer shall be pre-approved by the Audit Committee. The pre-approval requirement is waived with respect to non-audit services if the insurer is a SOX compliant entity or a direct or indirect wholly-owned subsidiary of a SOX compliant entity or:

(1) The aggregate amount of all such non-audit services provided to the insurer constitutes not more than five percent of the total amount of fees paid by the insurer to its qualified independent certified public accountant during the fiscal year in which the non-audit services are provided;

(2) The services were not recognized by the insurer at the time of the engagement to be non-audit services; and

(3) The services are promptly brought to the attention of the Audit Committee and approved prior to the completion of the audit by the Audit Committee or by one or more members of the Audit Committee who are the members of the board of directors to whom authority to grant such approvals has been delegated by the Audit Committee.

M. The Audit Committee may delegate to one or more designated members of the Audit Committee the authority to grant the pre-approvals required by Subsection L. The decisions of any member to whom this authority is delegated shall be presented to the full Audit Committee at each of its scheduled meetings.

N. The Director shall not recognize an independent certified public accountant as qualified for a particular insurer if a member of the board, president, chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for that insurer, was employed by the independent certified public accountant and participated in the audit of that insurer during the one-year period preceding the date that the most current statutory opinion is due. This section shall only apply to partners and senior managers involved in the audit. An insurer may make application to the Director for relief from the above requirement on the basis of unusual circumstances.

O. The insurer shall file, with its annual statement filing, the Director's letter granting relief from Subsection N with the states in which it is licensed or doing business and with the NAIC. If the non-domestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC. A captive insurer is not required to file the Director's letter granting relief from Subsection N with the NAIC if the captive insurer is not required to file its annual statement with the NAIC.

## Section 8. Consolidated or Combined Audits

A. An insurer may make written application to the Director for approval to include in its Audited Financial Report audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of insurance companies that utilizes a pooling or one hundred percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer

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cedes all of its direct and assumed business to the pool. In such cases, a columnar consolidating or combining worksheet shall be filed with the report, as follows:

- (1) Amounts shown on the consolidated or combined Audited Financial Report shall be shown on the worksheet;
- (2) Amounts for each insurer subject to this section shall be stated separately;
- (3) Noninsurance operations may be shown on the worksheet on a combined or individual basis;
- (4) Explanations of consolidating and eliminating entries shall be included; and
- (5) A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual Statements of the insurers.

### Section 9. Scope of Audit and Report of Independent Certified Public Accountant

Financial statements furnished pursuant to Section 5 shall be examined by the independent certified public accountant. The audit of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards. In accordance with Auditing (AU) Section 319 of the AICPA Professional Standards, Consideration of Internal Control in a Financial Statement Audit, the independent certified public accountant shall obtain an understanding of internal control sufficient to plan the audit. To the extent required by AU Section 319, for those insurers required to file a Management's Report of Internal Control over Financial Reporting pursuant to Section 16, the independent certified public accountant should consider (as that term is defined in Statements on Auditing Standards (SAS) No. 102 of the AICPA Professional Standards, Defining Professional Requirements in Statements on Auditing Standards or its replacement) the most recently available report in planning and performing the audit of the statutory financial statements. Consideration shall be given to the procedures illustrated in the Financial Condition Examiners Handbook promulgated by the National Association of Insurance Commissioners as the independent certified public accountant deems necessary.

### Section 10. Notification of Adverse Financial Condition

A. The insurer required to furnish the annual Audited Financial Report shall require the independent certified public accountant to report, in writing, within five business days to the board of directors or its Audit Committee any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the Director as of the balance sheet date currently under audit or that the insurer does not meet the minimum capital and surplus requirement of the South Carolina Code of Laws as of that date. An insurer that has received a report pursuant to this paragraph shall forward a copy of the report to the Director within five business days of receipt of the report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the Director. If the independent certified public accountant fails to receive the evidence within the required five business day period, the independent certified public accountant shall furnish to the Director a copy of its report within the next five business days.

B. No independent certified public accountant shall be liable in any manner to any person for any statement made in connection with the above paragraph if the statement is made in good faith in compliance with Subsection A.

C. If the accountant, subsequent to the date of the Audited Financial Report filed pursuant to this regulation, becomes aware of facts that might have affected his or her report, the Director notes the obligation of the accountant to take such action as prescribed in AU 561 of the AICPA Professional Standards, Subsequent Discovery of Facts Existing at the Date of the Auditor's Report.

### Section 11. Communication of Internal Control Related Matters Noted in an Audit

A. In addition to the annual Audited Financial Report, each insurer shall furnish the Director with a written communication as to any unremediated material weaknesses in its Internal control over financial reporting noted during the audit. Such communication shall be prepared by the accountant within sixty days after the filing of the annual Audited Financial Report, and shall contain a description of any unremediated material

weakness (as the term material weakness is defined in SAS No. 112 of the AICPA Professional Standards, Communicating Internal Control Related Matters Identified in an Audit, or its replacement) as of December 31 immediately preceding (so as to coincide with the Audited Financial Report discussed in Section 4(A)) in the insurer's Internal control over financial reporting identified by the accountant during the course of the audit of the financial statements. If no unremediated material weaknesses were noted, the communication should so state.

B. The insurer is required to provide a description of remedial actions taken or proposed to correct unremediated material weaknesses, if the actions are not described in the accountant's communication.

C. The insurer is expected to maintain information about significant deficiencies communicated by the independent certified public accountant. The information should be made available to the examiner conducting a financial examination for review and kept in a manner as to remain confidential.

**Section 12. Accountant's Letter of Qualifications**

A. The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual Audited Financial Report, a letter stating:

(1) That the accountant is independent with respect to the insurer and conforms to the standards of their profession as contained in the AICPA's Code of Professional Conduct and pronouncements of its Financial Accounting Standards Board and the South Carolina Board of Accountancy, or similar code;

(2) The background and experience in general, and the experience in audits of insurers of the staff assigned to the engagement and whether each is an independent certified public accountant. Nothing within this regulation shall be construed as prohibiting the accountant from utilizing such staff as deemed appropriate where use is consistent with the standards prescribed by generally accepted auditing standards;

(3) That the accountant understands the annual Audited Financial Report and that its opinion thereon will be filed in compliance with this regulation and that the Director will be relying on this information in the monitoring and regulation of the financial position of insurers;

(4) That the accountant consents to the requirements of Section 13 of this regulation and that the accountant consents and agrees to make available for review by the Director, or the Director's designee or appointed agent, the workpapers, as defined in Section 13;

(5) A representation that the accountant is properly licensed by an appropriate state licensing authority and is a member in good standing in the AICPA; and

(6) A representation that the accountant is in compliance with the requirements of Section 7 of this regulation.

**Section 13. Definition, Availability and Maintenance of Independent Certified Public Accountants Workpapers**

A. Workpapers are the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the accountant's audit of the financial statements of an insurer. Workpapers, accordingly, may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of insurer documents and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of his or her audit of the financial statements of an insurer and which support the accountant's opinion.

B. Every insurer required to file an Audited Financial Report pursuant to this regulation, shall require the accountant to make available for review by Department examiners, all workpapers prepared in the conduct of the accountant's audit and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the Department or at any other reasonable place designated by the Director. The insurer shall require that the accountant retain the audit workpapers and communications until the Department has filed a report on examination covering the period of the audit but no longer than seven years from the date of the audit report.

C. In the conduct of the aforementioned periodic review by the Department examiners, it shall be agreed that photocopies of pertinent audit workpapers may be made and retained by the department. Such reviews by

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the department examiners shall be considered investigations and all working papers and communications obtained during the course of such investigations shall be afforded the same confidentiality as other examination workpapers generated by the Department.

### Section 14. Requirements for Audit Committees

A. This section shall not apply to foreign or alien insurers licensed in this state or an insurer that is a SOX Compliant Entity or a direct or indirect wholly-owned subsidiary of a SOX Compliant Entity.

(1) The Audit Committee shall be directly responsible for the appointment, compensation and oversight of the work of any accountant (including resolution of disagreements between management and the accountant regarding financial reporting) for the purpose of preparing or issuing the Audited Financial Report or related work pursuant to this regulation. Each accountant shall report directly to the Audit Committee.

(2) Each member of the Audit Committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to Subsection (A)(5) of this Section and Section 3(A)(3).

(3) In order to be considered independent for purposes of this section, a member of the Audit Committee may not, other than in his or her capacity as a member of the Audit Committee, the board of directors, or any other board committee, accept any consulting, advisory or other compensatory fee from the entity or be an affiliated person of the entity or any subsidiary thereof. However, if law requires board participation by otherwise non-independent members, that law shall prevail and such members may participate in the Audit Committee and be designated as independent for Audit Committee purposes, unless they are an officer or employee of the insurer or one of its affiliates.

(4) If a member of the Audit Committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the responsible entity to the Director, may remain an Audit Committee member of the responsible entity until the earlier of the next annual meeting of the responsible entity or one year from the occurrence of the event that caused the member to be no longer independent.

(5) To exercise the election of the controlling person to designate the Audit Committee for purposes of this regulation, the ultimate controlling person shall provide written notice to the commissioners of the affected insurers. Notification shall be made timely prior to the issuance of the statutory audit report and include a description of the basis for the election. The election can be changed through notice to the Director by the insurer, which shall include a description of the basis for the change. The election shall remain in effect for perpetuity, until rescinded.

(6) The Audit Committee shall require the accountant that performs for an insurer any audit required by this regulation to timely report to the Audit Committee in accordance with the requirements of SAS No. 114 of the AICPA Professional Standards, The Auditor's Communication with those Charged with Governance, or its replacement, including:

(a) All significant accounting policies and material permitted practices;

(b) All material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and

(c) Other material written communications between the accountant and the management of the insurer, such as any management letter or schedule of unadjusted differences.

(7) If an insurer is a member of an insurance holding company system, the reports required by Subsection (A)(6) may be provided to the Audit Committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the Audit Committee.

(8) The proportion of independent Audit Committee members shall meet or exceed the following criteria:

Prior Calendar Year Direct Written and Assumed Premiums		
\$0 - \$300,000,000	Over \$300,000,000 - \$500,000,000	Over \$500,000,000
No minimum requirements. See also Note A and B.	Majority (50% or more) of members shall be independent. See also Note A and B.	Supermajority of members (75% or more) shall be independent. See also Note A.

Note A: The Director has authority afforded by state law to require the insurer’s board to enact improvements to the independence of the Audit Committee membership if the insurer is in a RBC action level event, meets one or more of the standards of an insurer deemed to be in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer.

Note B: All insurers with less than \$500,000,000 in prior year direct written and assumed premiums are encouraged to structure their Audit Committees with at least a supermajority of independent Audit Committee members.

Note C: Prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from non-affiliates for the reporting entities.

(9) An insurer with direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$500,000,000 may make application to the Director for a waiver from the Section 14 requirements based upon hardship. The insurer shall file, with its annual statement filing, the approval for relief from Section 14 with the states that it is licensed in or doing business in and the NAIC. If the non-domestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

Section 15. Conduct of Insurer in Connection with the Preparation of Required Reports and Documents

A. No director or officer of an insurer shall, directly or indirectly:

- (1) Make or cause to be made a materially false or misleading statement to an accountant in connection with any audit, review or communication required under this regulation; or
- (2) Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which the statements were made, not misleading to an accountant in connection with any audit, review or communication required under this regulation.

B. No officer or director of an insurer, or any other person acting under the direction thereof, shall directly or indirectly take any action to coerce, manipulate, mislead or fraudulently influence any accountant engaged in the performance of an audit pursuant to this regulation if that person knew or should have known that the action, if successful, could result in rendering the insurer’s financial statements materially misleading.

C. For purposes of Subsection B, actions that, “if successful, could result in rendering the insurer’s financial statements materially misleading” include, but are not limited to, actions taken at any time with respect to the professional engagement period to coerce, manipulate, mislead or fraudulently influence an accountant:

- (1) To issue or reissue a report on an insurer’s financial statements that is not warranted in the circumstances (due to material violations of statutory accounting principles prescribed by the Director, generally accepted auditing standards, or other professional or regulatory standards);
- (2) Not to perform audit, review or other procedures required by generally accepted auditing standards or other professional standards;
- (3) Not to withdraw an issued report; or
- (4) Not to communicate matters to an insurer’s Audit Committee.

Section 16. Management’s Report of Internal Control over Financial Reporting

A. Each insurer required to file an Audited Financial Report pursuant to this regulation that has annual direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of \$500,000,000 or more shall prepare a report of the insurer’s or

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group of insurers' Internal Control Over Financial Reporting, as these terms are defined in Section 3. The report shall be filed with the Director along with the Communicating Internal Control Related Matters Identified in an Audit described under Section 11. Management's Report of Internal Control Over Financial Reporting shall be as of December 31 immediately preceding.

B. Notwithstanding the premium threshold in Subsection A, the Director may require an insurer to file Management's Report of Internal Control Over Financial Reporting if the insurer is in any RBC level event, or meets any one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in S.C. Code Ann. Sections 35-5-120, 38-9-150, 38-9-360, and 38-9-440.

C. An insurer or a group of insurers that is

- (1) directly subject to Section 404;
- (2) part of a holding company system whose parent is directly subject to Section 404;
- (3) not directly subject to Section 404 but is a SOX compliant entity; or
- (4) a member of a holding company system whose parent is not directly subject to Section 404 but is a

SOX compliant entity; may file its or its parent's Section 404 Report and an addendum in satisfaction of this Section's requirement provided that those internal controls of the insurer or group of insurers having a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements (those items included in Section 5(B)(2) through 5(B)(7) of this regulation) were included in the scope of the Section 404 Report. The addendum shall be a positive statement by management that there are no material processes with respect to the preparation of the insurer's or group of insurers' audited statutory financial statements (those items included in Section 5(B)(2) through 5(B)(7) of this regulation) excluded from the Section 404 Report. If there are internal controls of the insurer or group of insurers that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements and those internal controls were not included in the scope of the Section 404 Report, the insurer or group of insurers may either file (i) a Section 16 report, or (ii) the Section 404 Report and a Section 16 report for those internal controls that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements not covered by the Section 404 Report.

D. Management's Report of Internal Control Over Financial Reporting shall include:

(1) A statement that management is responsible for establishing and maintaining adequate internal control over financial reporting;

(2) A statement that management has established internal control over financial reporting and an assertion, to the best of management's knowledge and belief, after diligent inquiry, as to whether its internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles;

(3) A statement that briefly describes the approach or processes by which management evaluated the effectiveness of its internal control over financial reporting;

(4) A statement that briefly describes the scope of work that is included and whether any internal controls were excluded;

(5) Disclosure of any unremediated material weaknesses in the internal control over financial reporting identified by management as of December 31 immediately preceding. Management shall not conclude that the internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles if there are one or more unremediated material weaknesses in its internal control over financial reporting;

(6) A statement regarding the inherent limitations of internal control systems; and

(7) Signatures of the chief executive officer and the chief financial officer (or equivalent position/title).

E. Management shall document and make available upon financial condition examination the basis upon which its assertions, required in Subsection D, are made. Management may base its assertions, in part, upon its review, monitoring and testing of internal controls undertaken in the normal course of its activities.

(1) Management shall have discretion as to the nature of the internal control framework used, and the nature and extent of documentation, in order to make its assertion in a cost effective manner and, as such, may include assembly of or reference to existing documentation.

(2) Management's Report on Internal Control over Financial Reporting, required by Subsection A, and any documentation provided in support thereof during the course of a financial condition examination, shall be kept confidential by the Director.

## Section 17. Exemptions

Upon written application of an insurer, the Director may grant an exemption from compliance with any provision or requirement of this regulation if the Director finds, upon review of the application, that compliance with this regulation would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within ten days from a denial of an insurer's written request for an exemption from this regulation, the insurer may request in writing a hearing, pursuant to statute, on its application for an exemption. The hearing shall be held in accordance with South Carolina law pertaining to administrative hearing procedures.

## Section 18. Canadian and British Companies

A. For Canadian and British insurers, the annual Audited Financial Report shall be defined as the annual statement of total business on the form filed by such companies with their supervision authority duly audited by an independent chartered accountant.

B. For such insurers, the letter required in Section 6B shall state that the accountant is aware of the requirements relating to the annual Audited Financial Report filed with the Director pursuant to Section 4 and shall affirm that the opinion expressed is in conformity with those requirements.

## Section 19. Effective Dates

A. Unless otherwise noted, the requirements of this regulation shall become effective for the reporting period ending December 31, 2010 and each year thereafter. An insurer or group of insurers not required to file a report because its total written premium is below the threshold that subsequently becomes subject to the reporting requirements shall have two years following the year the threshold is exceeded (but not earlier than December 31, 2010) to file the report. Likewise, an insurer acquired in a business combination shall have two calendar years following the date of acquisition or combination to comply with the reporting requirements.

B. The requirements of Section 7D shall become effective for audits of the year beginning January 1, 2010 and thereafter.

C. The requirements of Section 14 shall become effective on January 1, 2010. An insurer or group of insurers that is not required to have independent Audit Committee members or only a majority of independent Audit Committee members (as opposed to a supermajority) because the total direct written and assumed premium is below the threshold and subsequently becomes subject to one of the independence requirements due to changes in premium shall have one year following the year the threshold is exceeded (but not earlier than January 1, 2010) to comply with the independence requirements. Likewise, an insurer that becomes subject to one of the independence requirements as a result of a business combination shall have one calendar year following the date of acquisition or combination to comply with the independence requirements.

## Section 20. Severability Provision

If any section or portion of a section of this regulation or its applicability to any person or circumstance is held invalid by a court, the remainder of the regulation or the applicability of the provision to other persons or circumstances shall not be affected.

**Fiscal Impact Statement:**

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

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### Statement of Rationale:

The proposed amendments to the regulation are needed to clarify the application of the regulation to certain captive insurance companies and to provide a definition of the term “captive insurer” as used in the regulation. The amendments also set forth the date that the Audited Financial Report is due which is on or before the date six months after the company’s fiscal year end and clarify that in the event of a conflict between a provision of Regulation 69-60 and this regulation, that the provisions of this regulation will control.

Document No. 4088

### DEPARTMENT OF INSURANCE

#### CHAPTER 69

Statutory Authority: 1976 Code Sections 1-23-110 et seq., 38-3-110, 38-9-180,  
38-63-510 et seq., and 38-69-330

69-39. Annuity and Deposit Fund Disclosure

### Synopsis:

The South Carolina Department of Insurance proposes to amend Regulation 69-39, Annuity and Deposit Fund Disclosure Regulation, by striking and replacing the current text in its entirety. Proposed amendments to Regulation 69-39, Annuity and Deposit Fund Disclosure Regulation, will be based upon the current NAIC Annuity and Deposit Fund Disclosure Model Regulation and will provide updated consumer protections. Regulation 69-39 was adopted February 28, 1986 and has not been amended since its initial adoption.

Notice of Drafting for the proposed amendments was published in the *State Register* on October 24, 2008.

### Instructions:

Amend Regulation 69-39, Annuity and Deposit Fund Disclosure, by deleting the existing text and replacing with text as drafted below to the South Carolina Code of Regulations.

### Text:

69-39. Annuity Disclosure Regulation.

#### Section 1. Purpose

A. The purpose of this regulation is to provide standards for the disclosure of certain minimum information about annuity contracts to protect consumers and foster consumer education. The regulation specifies the minimum information which must be disclosed and the method for disclosing it in connection with the sale of annuity contracts. The goal of this regulation is to ensure that purchasers of annuity contracts understand certain basic features of annuity contracts.

B. The regulation does not prohibit the use of additional material which is not in violation of this regulation or any other South Carolina statute or regulation.

#### Section 2. Scope

This regulation applies to all group and individual annuity contracts and certificates except:

A. Registered or non-registered variable annuities or other registered products;

B. Immediate and deferred annuities that contain no non-guaranteed elements;

C. (1) Annuities used to fund:

(a) An employee pension plan which is covered by the Employee Retirement Income Security Act (ERISA);

(b) A plan described by Sections 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;

(c) A governmental or church plan defined in Section 414 of the Internal Revenue Code or a deferred compensation plan of a state or local government or a tax exempt organization under Section 457 of the Internal Revenue Code; or

(d) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(2) Notwithstanding Paragraph (1), the regulation shall apply to annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make whether on a pre-tax or after-tax basis, and where the insurance company has been notified that plan participants may choose from among two (2) or more fixed annuity providers and there is a direct solicitation of an individual employee by a producer for the purchase of an annuity contract. As used in this subsection, direct solicitation shall not include any meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement;

D. Structured settlement annuities;

E. Charitable gift annuities; and

F. Funding agreements.

### Section 3. Definitions

For the purposes of this regulation:

A. "Buyer's Guide" means the current Buyer's Guide to Fixed Deferred Annuities, including any appendices thereto, adopted by the National Association of Insurance Commissioners (NAIC) or language approved by the Director of the Department of Insurance.

B. "Charitable gift annuity" means a transfer of cash or other property by a donor to a charitable organization in return for an annuity payable over one or two lives, under which the actuarial value of the annuity is less than the value of the cash or other property transferred and the difference in value constitutes a charitable deduction for federal tax purposes, but does not include a charitable remainder trust or a charitable lead trust or other similar arrangement where the charitable organization does not issue an annuity and incur a financial obligation to guarantee annuity payments.

C. "Contract owner" means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.

D. "Determinable elements" means elements that are derived from processes or methods that are guaranteed at issue and not subject to company discretion, but where the values or amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates (including any bonus), benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these. These elements may be described as guaranteed but not determined at issue. An element is considered determinable if it was calculated from underlying determinable elements only, or from both determinable and guaranteed elements.

E. "Funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.

F. "Generic name" means a short title descriptive of the annuity contract being applied for or illustrated such as "single premium deferred annuity."

G. "Guaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these, that are guaranteed and determined at issue. An element is considered guaranteed if all of the underlying elements that go into its calculation are guaranteed.

H. "Non-guaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element is considered non-guaranteed if any of the underlying non-guaranteed elements are used in its calculation.

I. "Structured settlement annuity" means a "qualified funding asset" as defined in Section 130(d) of the Internal Revenue Code or an annuity that would be a qualified funding asset under Section 130(d) of the Internal Revenue Code but for the fact that it is not owned by an assignee under a qualified assignment.

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### Section 4. Standards for the Disclosure Document and Buyer's Guide

A.(1) Where the application for an annuity contract is taken in a face-to-face meeting, the applicant shall at or before the time of application be given both the disclosure document described in Subsection B and a copy of the Buyer's Guide.

(2) Where the application for an annuity contract is taken by means other than in a face-to-face meeting, the applicant shall be sent both the disclosure document and the Buyer's Guide no later than five (5) business days after the completed application is received by the insurer.

(a) With respect to an application received as a result of a direct solicitation through the mail:

(i) Providing a Buyer's Guide in a mailing inviting prospective applicants to apply for an annuity contract shall be deemed to satisfy the requirement that the Buyer's Guide be provided no later than five (5) business days after receipt of the application.

(ii) Providing a disclosure document in a mailing inviting a prospective applicant to apply for an annuity contract shall be deemed to satisfy the requirement that the disclosure document be provided no later than five (5) business days after receipt of the application.

(b) With respect to an application received via the Internet:

(i) Taking reasonable steps to make the Buyer's Guide available for viewing and printing on the insurer's website shall be deemed to satisfy the requirement that the Buyer's Guide be provided no later than five (5) business days after receipt of the application.

(ii) Taking reasonable steps to make the disclosure document available for viewing and printing on the insurer's website shall be deemed to satisfy the requirement that the disclosure document be provided no later than five (5) business days after receipt of the application.

(c) A solicitation for an annuity contract provided in other than a face-to-face meeting shall include a statement that the proposed applicant may contact the Department for a free Buyer's Guide. In lieu of the foregoing statement, an insurer may include a statement that the prospective applicant may contact the insurer for a free Buyer's Guide.

(3) Where the Buyer's Guide and disclosure document are not provided at or before the time of application, a free look period of no less than fifteen (15) days shall be provided for the applicant to return the annuity contract without penalty. This free look period shall run concurrently with any other free look period provided under state law or regulation.

B. At a minimum, the following information shall be included in the disclosure document required to be provided under this regulation:

(1) The generic name of the contract, the company product name, if different, and form number, and the fact that it is an annuity.

(2) The insurer's name and address.

(3) A description of the contract and its benefits, emphasizing its long-term nature, including the following where appropriate:

(a) The guaranteed, non-guaranteed and determinable elements of the contract, and their limitations, if any, and an explanation of how they operate;

(b) An explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate and the fact that rates may change from time to time and are not guaranteed;

(c) Periodic income options both on a guaranteed and non-guaranteed basis;

(d) Any value reductions caused by withdrawals from or surrender of the contract;

(e) How values in the contract can be accessed;

(f) The death benefit, if available and how it will be calculated;

(g) A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract; and

(h) The impact of any rider, such as a long-term care rider.

(4) The specific dollar amount or percentage charges and fees with an explanation of how they apply.

(5) Information about the current guaranteed rate for new contracts that contains a clear notice that the rate is subject to change.

C. Insurers shall define terms used in the disclosure statement in language that facilitates the understanding by a typical person within the segment of the public to which the disclosure statement is directed.

**Section 5. Report to Contract Owners**

For annuities in the payout period with changes in non-guaranteed elements and for the accumulation period of a deferred annuity, the insurer shall provide each contract owner with a report, at least annually, on the status of the contract that contains at least the following information:

- A. The beginning and end date of the current report period;
- B. The accumulation and cash surrender value, if any, at the end of the previous report period and at the end of the current report period;
- C. The total amounts, if any, that have been credited, charged to the contract value or paid during the current report period; and
- D. The amount of outstanding loans, if any, as of the end of the current report period.

**Section 6. Penalties**

In addition to any other penalties provided by the laws of this state, an insurer or producer that violates a requirement of this regulation shall be guilty of a violation of South Carolina Code Ann. § 38-57-10 et seq.

**Section 7. Severability**

If any section or portion of a section of this regulation, or its applicability to any person or circumstances, is held invalid by a court, the remainder of this regulation, or the applicability of its provisions to other persons, shall not be affected.

**Section 8. Effective Date**

This regulation shall become effective six months following final publication in the State Register and shall apply to contracts sold on or after the effective date.

**Fiscal Impact Statement:**

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

**Statement of Rationale:**

The regulation is needed to set forth the standards to be followed by insurers and producers when involved in the sales, solicitation or marketing of annuities. It provides for certain consumer safeguards and disclosures that must be followed in connection with the solicitation, sale or purchase of an annuity product. This regulation is based upon the NAIC Model Annuity Disclosure Regulation.

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Document No. 4097  
**DEPARTMENT OF INSURANCE**  
CHAPTER 69

Statutory Authority: 1976 Code Sections 1-23-10 et seq., 38-3-110(2) and 38-43-106

69-50. Continuing Insurance Education

### **Synopsis:**

The South Carolina Department of Insurance proposes to amend Regulation 69-50, Continuing Insurance Education. The amendments to Regulation 69-50 will update and provide guidance to producers, continuing education sponsors, instructors and administrators on compliance with the statutory continuing education requirements for producers. The updates will bring the regulation into compliance with the statutory amendments enacted by South Carolina Act 326 of 2008 and South Carolina Act 69 of 2009.

Notice of Drafting for the proposed regulation was published in the *State Register* on August 28, 2009.

### **Instructions:**

Amend Regulation 69-50 as drafted below and add to the South Carolina Code of Regulations.

### **Text:**

69-50. Continuing Insurance Education.

#### I. Purpose

The purpose of this regulation is to establish rules and standards which shall apply to continuing insurance education for individuals qualified or licensed to act as insurance producers in this State.

#### II. Scope

A. The rules contained in this regulation shall apply to all individuals qualified or licensed to act as insurance producers in this State, except:

1. Limited line insurance producers;
2. Limited line credit insurance producers; and
3. Nonresident producers who have successfully satisfied continuing insurance education requirements of their resident state, regardless of the requirements of that other state.

B. Multi-line producers who do not wish to complete the required eight hours in each line of authority held must submit a request in writing to the Department to cancel the line(s) of authority in which they do not wish to complete the eight required hours. However, the producer must complete a total of twenty-four hours of continuing education with at least three hours in courses approved as ethics.

C. The Director of Insurance at his discretion may mandate certain continuing education courses to be taken by producers to meet continuing education compliance.

#### III. Definitions

When used with these regulations, the following definitions apply:

(1) "Approved Course" is a course offered in a classroom environment that is approved by the South Carolina Department of Insurance for continuing insurance education credit. Approved courses may include information on specific insurance products approved for sale in the state, relevant state or national laws, taxation related to insurance, insurance practices, ethics, claim procedures and policyholder relations. Approved courses shall not include courses or portions of courses developed for prelicensing education, for personal development, motivation, sales, or personal enrichment. Approved courses must be led or monitored by an approved instructor.

(2) "Approved Instructor" means an individual who has been approved by the Department of Insurance in accordance with Section VI of this Regulation and who teaches or otherwise instructs an approved continuing education course. The individual must have competency in the subject matter of the course.

(3) "Proctor" means a disinterested third party.

(4) "Approved Sponsor" is a responsible organization which demonstrates it is capable of offering, conducting, and maintaining quality controls of courses. Approved sponsors may include licensed insurance companies, producer associations, insurance trade associations, private organizations, and institutions of higher learning. A sponsor must be approved by the Department.

(5) "Classroom" is a location conducive to learning, and may include a traditional classroom, an auditorium, or other meeting-place, which provides an environment suitable for the transfer of information.

(6) "Classroom Hour" is at least fifty minutes of participation in an approved course in a classroom, teleconference or distance learning. Not more than ten minutes of any sixty-minute period may be used for breaks, roll taking, or administrative instructions.

(7) "Competency Examination" is a closed book examination taken and passed by the producer without assistance and personally monitored by a proctor who is not related to the producer, is not his immediate supervisor, or his employee. A score of 70 or above is required for the examinee to pass the examination.

(8) "Compliance Deadline" means every two years by 5 P.M. on the last day of the licensee's month of birth. Individuals born in an even numbered year must comply every even numbered year by the last day of the individual's month of birth. Individuals born in an odd numbered year must comply every odd numbered year by the last day of the individual's month of birth.

(9) "Compliance With Continuing Education for Resident Producers" means completing twenty-four hours of continuing education by the compliance deadline, with a minimum of eight hours in each line of authority, with at least three hours of ethics and paying a recordkeeping fee to the Continuing Education Administrator by the compliance deadline in a biennial compliance year.

(10) "Compliance With Continuing Education for Nonresident Producers" means meeting the continuing education requirements in their home state.

(11) "Continuing Education Administrator" means the Continuing Education Administrator responsible for administering the continuing insurance education requirements. The Director may designate a Continuing Education Administrator within the Department or, in the alternative, contract with an outside service provider to function as continuing education administrator and to provide record-keeping services.

(12) "Course" means an organized, outlined body of information intended to convey knowledge or information to the producer.

(13) "Credit Hour" is a value assigned to an approved course by the Department. Hours of credit are calculated in full hours.

(14) "Department" means the South Carolina Department of Insurance.

(15) "Director" means the Director of the Department of Insurance or his designee.

(16) "Product-Specific" or "Specific Insurance Products" means information about a particular policy, procedure, or coverage. This includes, but is not limited to, special rating information, special underwriting practices, and specialized or unique claim procedures of a company or group of companies.

(17) "Recordkeeping Fee" means the fee paid to the Continuing Education Administrator to cover the costs of compiling and maintaining records reflecting the continuing insurance education status of all licensed or qualified producers.

(18) "Self-study Hour" is a study period of fifty minutes from an approved course followed by a competency examination. Self-study hours may include textbook study, video study, intranet, internet, CD-ROM and other electronic means of information communication.

#### IV. Sponsor Approval

A. Sponsors must be approved by the Department of Insurance before they may submit courses for approval to the Department. The application to become a sponsor must be submitted to the Department at least thirty (30) days prior to the Continuing Education Advisory Committee meeting. If the applicant's type of business is a private entity, other than an insurance company, producer's trade association, institution of producer's trade association or institution of higher learning, the applicant must submit a letter explaining the applicant's type of business and how long the business has been offering insurance education courses.

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B. Before an approved sponsor may offer any course, the sponsor must submit the course to the Department for approval and be assigned a course approval number by the Department.

C. Sponsors may not use another sponsor's course approval number without the prior written authorization of the sponsor. A copy of the authorization must be submitted to the Department before the course may be offered.

D. Approved sponsors of approved courses are responsible for collecting accurate attendance records and maintaining records containing the names of producers who completed all sessions of the approved course, or who successfully completed the competency examination for courses approved for self-study. Sponsors shall maintain these records for a three-year period following the date of approved course completion. These records must be made available to the Department upon request.

E. Approved sponsors are responsible for the actions of their instructors.

F. Approved sponsors may only offer courses which have been approved by the Department.

G. Approved sponsors must notify the Department in writing within thirty (30) days of any change in address and of any change in the authorized representative of the sponsor.

H. Approved sponsors must allow representatives of the Department and the continuing education administrator, in an official capacity, to audit classroom course instruction, correspondence course review sessions, course records, records of examination and attendance rosters. These representatives may attend any course offered for the purpose of the audit without paying a fee.

I. A sponsor shall report to the Director or his designee any administrative action taken against the sponsor in another jurisdiction or by another governmental agency in this State within thirty (30) days of the final disposition of the matter. This report shall include a copy of the order, consent to order or other relevant legal documents.

### V. Course Approval

A. Approved Sponsors of courses presented for approval shall submit to the Department at least thirty (30) days in advance of the Continuing Education Advisory Board meeting an application for approval, which shall include the following:

- (1) a detailed outline of the course;
- (2) a timetable, with instruction minutes assigned to each topic;
- (3) a sample competency examination if the course is self-study with text reference for each exam question;
- (4) course material;
- (5) self study courses must include a certification report of the number of words per document, grade level and degree of difficulty of the course;
- (6) online courses must include a screen count and number of words per screen; and
- (7) a nonrefundable filing fee established by the Department.

No course may be offered until written notification of its approval has been issued by the Department. Incomplete submissions will be disapproved and the application will be returned to the sponsor. The Director has the discretion to develop different standards for approval of courses offered by accredited institutions of higher learning and to waive independent approval of courses offered by nationally recognized industry organizations.

B. Courses will be approved for a period of not more than three (3) years from the approval date. Sponsors may apply to renew course approval.

C. Courses that are submitted for renewal must include all of the information requested in Section V (A) of this regulation and must include the page numbers and sections where updates to course material have been made.

D. Approved sponsors may file an appeal if a course submission is disapproved or if fewer hours are approved than were requested by the sponsor. The appeal must specify the exact disagreement and contain documentation to support the appeal. Appeals must be in writing and must be submitted to the Department within thirty (30) days of receipt of the notice of course disapproval or notice of fewer hours approved. Appeals will be submitted to three representatives of the Continuing Education Advisory Board for review and recommendation to the Department.

## VI. Instructor Approval

A. Instructors must be approved by the Department of Insurance before teaching any course. The application packet must be submitted by an approved sponsor thirty (30) days prior to the instructor teaching any course and must include the following:

- (1) a properly completed instructor approval application;
- (2) documentation of one of the following must be submitted with the application for approval:
  - (a) a college degree in insurance from an accredited institution of higher learning;
  - (b) a professional designation of CPCU or CIC for property and casualty approval and ChFC, CFP, FLMI, LUTCF or CLU for life, accident and health approval;
  - (c) seven or more years of practical experience in the subject matter;
  - (d) or a college degree and three or more years of practical experience in the subject matter;
  - (e) five or more years of practical experience in the subject matter and has one or more of the following professional insurance designations or programs in the subject matter for which approval is sought: INS or AAI; or
  - (f) Insurance Department regulators with a minimum of one year of insurance experience; and
- (3) a nonrefundable filing fee to be established by the Department of Insurance.

Incomplete submissions will be returned to the sponsor. B. Instructors will be approved for a period of not more than three (3) years from the approval date. Sponsors may apply to renew instructor approval.

C. Instructors must ensure that attendees do not use class time for any purpose other than learning the material being presented. Instructors should deny credit to anyone who is inattentive or who does not attend the entire classroom session.

D. Instructors must distribute SCID Form 3617 prior to each continuing education classroom session. E. Proctors are responsible for checking an examinee's photograph identification before administering an examination. Proctors are responsible for returning all examination material to the sponsor within two days following the completion of the examination.

F. Instructors/Proctors of correspondence course review sessions must not disclose the examination questions or answers to the examination questions on the competency examination during the review session.

G. An instructor shall report to the Director or his designee any administrative action taken against the instructor in another jurisdiction or by another governmental agency in this State within thirty (30) days of the final disposition of the matter. This report shall include a copy of the order, consent to order, or other relevant legal documents.

H. Within thirty (30) days, an instructor shall report to the Director any criminal prosecution of the instructor taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.

## VII. Certification

A. Approved Sponsors of approved courses must submit class rosters to the Continuing Education Administrator according to the following timetable:

1. Approved classroom course or seminar - within thirty (30) days of completion of the course or seminar; and
2. Approved self-study course - within thirty (30) days of the examination completion date.

Rosters must be properly completed, typewritten or computer-generated and contain the names and identification numbers of producers who completed all sessions of the approved course, or who successfully completed the competency examination for courses approved for self-study. Incomplete or inaccurate rosters will be returned to the sponsor. Subsequent submissions of any roster that has been returned must include a letter from the sponsor explaining corrections or any changes made.

B. Approved Sponsors of approved courses are required to provide a certification of course completion to each individual who successfully completes an approved course or an approved self-study course within thirty (30) business days after the course is completed or the competency examination results are received. Verification of the accuracy of the certification provided by the approved sponsor remains the responsibility of the producer.

C. A producer who successfully completes an approved course may not repeat the course and receive certification within two years of its original completion date.

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D. Instructors of approved classroom courses shall be given a certification equal to the number of hours for which the course is approved. Instructors/Proctors may not be given a certification for conducting review sessions for approved correspondence courses.

E. Producers who accumulate credits in excess of the continuing insurance education requirements may apply these additional credits to the next biennial continuing insurance education period. No more than eighteen (18) credit hours in the line of authority in which they are earned may be carried forward to the next biennial continuing insurance education period. F. No credit will be given for courses taken before they have been approved by the Department. Credit may not be given for courses that have not been renewed by the sponsor.

### VIII. Forms

The following items must be on forms specified or approved by the Director: (1) applications for sponsor approval, (2) applications for course approvals and (3) applications for instructor approval. Class completion rosters must be submitted electronically to the CE Administrator. However, individual course completion certificates must be provided to the producer.

### IX. Advertising

A. No course may be advertised as an approved course until approval has been received from the Department.

B. Announcements, advertisements and information about courses designated as approved courses by the Department shall contain the statement "This course is approved by the South Carolina Department of Insurance for Continuing Insurance Education Credit" followed by a statement of the number of credit hours and the type of license to which the credit may apply. If the course offering contains material which is not approved, the announcement, advertisement or information must clearly state the amount of course time which is not approved for continuing insurance education credits.

C. Announcements, advertisements or information about approved courses shall contain clear and concise statements about the cost of the course, cancellation procedures, and refund policies.

### X. Fees

Every producer subject to continuing insurance education requirements pursuant to Section 38-43-106 of the South Carolina Code of Laws is responsible for payment of a reasonable annual recordkeeping fee to the Continuing Education Administrator for operation of the continuing insurance education program. The license and appointment(s) of any producer who does not pay the continuing education recordkeeping fee by the biennial compliance deadline will lapse on the day following the biennial compliance deadline. The Department may reactivate the license and appointment that has lapsed if within six months of the compliance deadline the continuing education recordkeeping fee has been paid to the Continuing Education Administrator and a \$50 penalty has been paid to the Department, and proof of completion of a total of twenty-four hours of continuing education credits has been received. Failure to pay the continuing education recordkeeping fee and a \$50 penalty and providing proof of completion of twenty-four hours of continuing education credits within six months of the compliance deadline will result in the license and appointment being canceled. In order to regain licensure status, the producer must retake and pass the appropriate producer licensing examination, complete a new application and pay an application fee to the Department.

### XI. Continuing Education Hours

Producers who fail to complete twenty-four hours of approved continuing education credits by the biennial compliance deadline will have their license and appointment(s) suspended on the day following the biennial compliance deadline. Producers may reactivate the license and appointment(s) that have lapsed, if within six months of the compliance deadline, the continuing education recordkeeping fee has been paid to the Continuing Education Administrator and a \$50 penalty has been paid to the Department of Insurance and proof of completion of a total of twenty-four hours of continuing education credits has been received. The license and appointment(s) of a producer who does not provide documentation of compliance within six months of the compliance deadline will be canceled. In order to regain licensing status, the producer must retake and pass the

appropriate producer licensing examination, complete a new application and pay an application fee to the Department.

#### XII. Non-Compliance

A. The Director shall have the authority to conduct surveys of producers, approved sponsors, and approved instructors to verify that the approved courses are administered as filed with the Department, and to determine compliance with Section 38-43-106 of the South Carolina Code of Laws and the regulations contained herein.

B. The failure of approved sponsors and instructors to comply with the provisions of Section 38-43-106 of the South Carolina Code of Laws or with the provisions of these regulations may result in a fine of not less than \$1,000, suspension of approval, or termination of approval status.

#### XIII. Hardship Waiver

The request for a hardship waiver must be in writing and must be received by the Department on or before the individual's biennial compliance deadline. Hardship waiver requests may only be granted for good cause shown, with the recommendation of the Continuing Education Administrator and the approval of the Director. For purposes of this section, "good cause" includes, but is not limited to, illness or catastrophic events beyond the control of the producer, which preclude the producer from conducting normal work activities during the biennial compliance period. The producer must provide sufficient documentation that the hardship prevented the producer from conducting normal work activities during the biennial compliance period. A licensed insurance producer who is unable to comply with continuing education due to active military service during the biennial compliance period may request a hardship waiver by submitting a copy of his military orders with the hardship waiver request. Producers who apply for the hardship waiver must still pay the Continuing Education recordkeeping fee to the Continuing Education Administrator by the biennial compliance deadline.

#### XIV. Administration of Continuing Education Requirements

The Director is responsible for administering the continuing insurance education requirements contained in South Carolina Code of Laws Section 38-43-106 and in this regulation, and is responsible for the approval of courses of instruction which qualify for these purposes. Effective January 1, 2011, the compliance deadline to meet continuing insurance education requirements will be based upon the individual producer's birth month and birth year. To facilitate the transition from all producers having a May 1 compliance deadline to individual birth month/birth year compliance deadlines, the Director may specify the continuing insurance education requirements with which producers must comply during the transition period ending December 31, 2012. In administering this program, the Director in his discretion, may designate a Continuing Education Administrator within the Department, or, in the alternative, contract with an outside service provider to function as continuing education administrator and to provide record-keeping services.

#### XV. Effective Date

This regulation shall become effective upon final publication in the *State Register*.

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

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

#### **Statement of Rationale:**

The Continuing Insurance Education regulation is being updated to reflect the statutory amendments enacted by South Carolina Act 326 of 2008 and South Carolina Act 69 of 2009. The amendments to the regulation are needed to clarify and update the continuing insurance education requirements for producers and to provide direction to sponsors, instructors and administrators offering continuing education courses and maintaining records of continuing education compliance by producers.

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Document No. 4099  
**DEPARTMENT OF INSURANCE**  
CHAPTER 69

Statutory Authority: 1976 Code Sections 1-23-10 et seq., 38-2-10, 38-3-110(2), 38-39-60, 38-43-80, 38-43-130, 38-45-50, 38-47-40, 38-48-160, 38-49-20, 38-53-20, 38-70-50 and 38-78-110

69-33. Dates for Payment of Annual License Fees/Appointment Fees for Insurance Agents, Brokers, Adjusters, Agencies, and Motor Vehicle Damage Appraisers

### **Synopsis:**

The South Carolina Department of Insurance proposes to amend Regulation 69-33, Dates for Payment of Annual License Fees for Insurance Agents, Brokers, Adjusters, Agencies, and Motor Vehicle Damage Appraisers. The amendments to Regulation 69-33 will update terminology, clarify the requirements related to license renewal fees, and add in the applicable requirements for additional licenses issued by the department. The amendments will also allow the department to be uniform with the National Association of Insurance Commissioners (NAIC) standards by conforming the regulation to the statutory amendments enacted by South Carolina Act 69 of 2009. This will benefit South Carolina Producers to have their state of domicile in compliance with national standards which will speed up their licensing process in other states.

Notice of Drafting for the proposed regulation was published in the *State Register* on August 28, 2009.

### **Instructions:**

Amend Regulation 69-33 as drafted below and add to the South Carolina Code of Regulations.

### **Text:**

69-33. Dates for Payment of License Fees/Appointment Fees for Adjusters, Agencies, Bail Bondsmen/Runners, Brokers, Motor Vehicle Physical Damage Appraisers, Premium Service Companies, Producer Appointments, Producers, Public Adjusters, Rental Car Companies, Service Contract Providers, Third Party Administrators and Utilization Review Agents.

#### Section I. Purpose

The purpose of this regulation is to establish dates for the time and manner of payment of license and appointment fees.

#### Section II. Scope

This regulation applies to all Adjusters, Agencies, Bail Bondsmen/Runners, Brokers, Motor Vehicle Physical Damage Appraisers, Premium Service Companies, Producer Appointments, Producers, Public Adjusters, Rental Car Companies, Service Contract Providers, Third Party Administrators and Utilization Review Agents. Except for Producers, individuals and entities are not required to renew their initial license if the license was issued within one hundred eighty (180) days of the first deadline for renewal.

#### Section III. Dates for Payment of License and Appointment Fees

The deadline for payment of license and appointment fees is the last day of the renewal period. Unless otherwise provided by applicable law, the dates for payment of license and appointment fees will be as follows:

##### A. Annual License Renewals

Third Party Administrators	February 1 – March 1
Bail Bondsmen/Runners	June 1 – June 30
Service Contract Providers	September 1 – September 30

B. Biennial License Renewals

(1) Even-numbered year renewals

Agencies	January 1 – January 31
Premium Service Companies	February 1 – March 1
Brokers	May 1 – May 31
Utilization Review Agents	June 1 – June 30
Producer Appointments	September 1 – September 30
Public Adjusters	October 1 – October 30
Rental Car Companies	December 1 – December 31

(2) Odd-numbered year renewals

Adjusters	August 1 – August 31
Motor Vehicle Physical Damage Appraisers	October 1 – October 31

C. Producer License Renewal

All licensed producers must renew their license and pay the license renewal fee by the last day of the individual's month of birth. An individual born in an odd-numbered year shall comply every odd-numbered year. An individual born in an even-numbered year shall comply every even-numbered year.

Section IV. Effect of Failure to Pay Fees by Deadline

If fees are not paid by the last day of the applicable renewal period designated above, the license and/or appointment(s) will lapse or cancel as specified by statute. Any other license contingent upon having a particular license will also lapse or cancel.

Section V. Reinstatement

A. Except as otherwise provided by applicable statute, any license(s) (other than producer licenses) so lapsed or canceled may be reinstated upon the individual's or entity's compliance with each of the following:

- (1) compliance with the applicable licensing or other license qualification statute;
- (2) payment of the applicable fees; and
- (3) payment of a penalty fee in the amount of four (4) times the license renewal fee or \$250, whichever is greater.

B. Producer license reinstatement. A producer may reinstate a lapsed license by:

- (1) complying with all licensing requirements, including continuing insurance education, within six (6) months of the individual's compliance deadline;
- (2) payment of the applicable fees; and
- (3) payment of a reinstatement fee of up to \$250.

C. Reinstatement of Appointments. An insurer may reinstate appointments that have been canceled subject to each of the following:

- (1) the producer(s) complying with all licensing requirements;
- (2) payment by the insurer of the regular biennial appointment fee(s); and
- (3) payment of a \$250 penalty fee per appointment.

Section VI. Effective Date: This regulation shall become effective upon final publication in the *State Register* and implementation will begin for each type of license on the established date following.

**Fiscal Impact Statement:**

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

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### Statement of Rationale:

The Dates for Payment of License Fees regulation is being updated to provide guidance to additional licensees of the department and to reflect the statutory amendments enacted by South Carolina Act 69 of 2009. The amendments to the regulation are needed to clarify and update the dates for payment of fees for licensees of the Department.

Document No. 4066  
**DEPARTMENT OF INSURANCE**  
CHAPTER 69

Statutory Authority: 1976 Code Sections 1-23-110 et seq., 38-3-110, 38-72-60 and 38-72-70

69-44. Long Term Care Insurance

### Synopsis:

The South Carolina Department of Insurance proposes to amend Regulation 69-44, Long Term Care Insurance. The Long Term Care Insurance Model Regulation was recently updated by the National Association of Insurance Commissioners (NAIC). The model regulation implements additional safeguards designed to promote the availability of long term care insurance coverage and to protect applicants for long term care insurance from unfair or deceptive sales or enrollment practices. The regulation provides for certain disclosures and notices to consumers who purchase long term care insurance policies and long term care qualified partnership program insurance policies and will facilitate comparisons between various long term care insurance products. Additional record keeping requirements have been included to ensure that insurers and producers comply with the requirements of the regulation. The amendments to Regulation 69-44 bring the long term care regulation into compliance with Federal law and will provide uniformity of regulation with other states who have adopted the model regulation.

Notice of drafting for the proposed regulation was published in the State Register on September 26, 2008.

### Instructions:

Amend Regulation 69-44 by striking the existing regulation in its entirety and inserting the language below.

### Text:

69-44. Long Term Care Insurance

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**Section 1. Purpose**

The purpose of this regulation is to implement S.C. Code Section 38-72-10 et seq., to promote the public interest, to promote the availability of long term care insurance coverage, to protect applicants for long term care insurance, as defined, from unfair or deceptive sales or enrollment practices, to facilitate public understanding and comparison of long term care insurance coverages, and to facilitate flexibility and innovation in the development of long term care insurance.

**Section 2. Authority**

This regulation is issued pursuant to the authority vested in the Director under S.C. Code Sections 38-72-60 and 38-72-70.

**Section 3. Applicability and Scope**

Except as otherwise specifically provided, this regulation applies to all long term care insurance policies, including qualified long term care contracts and life insurance policies that accelerate benefits for long term care delivered or issued for delivery in this state on or after the effective date by insurers; fraternal benefit societies; nonprofit health, hospital and medical service corporations; prepaid health plans; health maintenance organizations and all similar organizations. Certain provisions of this regulation apply only to qualified long

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term care insurance contracts as noted. Additionally, this regulation is intended to apply to policies having indemnity benefits that are triggered by activities of daily living and sold as disability income insurance, if:

1. The benefits of the disability income policy are dependent upon or vary in amount based on the receipt of long term care services;
  2. The disability income policy is advertised, marketed or offered as insurance for long term care services;
- or
3. Benefits under the policy may commence after the policyholder has reached Social Security's normal retirement age unless benefits are designed to replace lost income or pay for specific expenses other than long term care services.

### Section 4. Definitions

For the purpose of this regulation, the following definitions apply.

#### A. "Applicant" means:

(1) In the case of an individual long term care insurance policy, the person who seeks to contract for benefits; and

(2) In the case of a group long term care insurance policy, the proposed certificate holder.

B. "Certificate" means, for the purpose of this regulation, any certificate issued under a group long term care insurance policy, which policy has been delivered or issued for delivery in this state.

C. "Director" means the person who is appointed by the Governor upon the advice and consent of the Senate and who is responsible for the operation and management of the Department of Insurance, including all of its divisions. The director may appoint or designate the person or persons who shall serve at the pleasure of the director to carry out the objectives or duties of the department as provided by law. Furthermore, the director may bestow upon his designee or deputy director any duty or function required of him by law in managing or supervising the insurance department.

D.(1) "Exceptional increase" means only those increases filed by an insurer as exceptional for which the Director determines the need for the premium rate increase is justified:

(a) Due to changes in laws or regulations applicable to long term care coverage in this state; or

(b) Due to increased and unexpected utilization that affects the majority of insurers of similar products.

(2) Except as provided in Section 20 of this Regulation, exceptional increases are subject to the same requirements as other premium rate schedule increases.

(3) The Director may request a review by an independent actuary or a professional actuarial body of the basis for a request that an increase be considered an exceptional increase.

(4) The Director, in determining that the necessary basis for an exceptional increase exists, shall also determine any potential offsets to higher claims costs.

E. "Group long term care insurance" means a long term care insurance policy which is delivered or issued for delivery in this State and issued to:

(1) one or more employers or labor organizations, or to a trust or to the trustees of a fund established by one or more employers or labor organizations or a combination thereof, for employees or former employees or a combination thereof, or for members or former members or a combination thereof of the labor organizations;

or

(2) any professional, trade, or occupational association for its members or former or retired members or combination thereof if such association:

(a) is composed of individuals all of whom are or were actively engaged in the same profession, trade, or occupation; and

(b) has been maintained in good faith for purposes other than obtaining insurance; or

(3) an association or to a trust or to the trustee of a fund established, created, or maintained for the benefit of members of one or more associations. Prior to advertising, marketing, or offering the policy within this State, the association or the insurer of the association shall file evidence with the department that the association has at the outset a minimum of one hundred persons and has been organized and maintained in good faith for purposes other than that of obtaining insurance, has been in active existence for at least one year, and has a constitution and bylaws which provide that the association holds regular meetings not less than annually to further the purposes of its members, except for credit unions, the association collects dues or solicits contributions from members, and the members have voting privileges and representation on the

governing board and committees. Ninety days after the filing, the association is considered to have satisfied the organizational requirements unless the director or his designee makes a finding that the association does not satisfy those organizational requirements;

(4) a group other than as described in items (E)(1), (E)(2), and (E)(3), subject to a finding by the director or his designee that the issuance of the group policy is not contrary to the best interest of the public, the issuance of the group policy would result in economies of acquisition or administration, and the benefits are reasonable in relation to the premiums charged.

F. "Incidental," as used in Section 20(J) of this Regulation, means that the value of the long term care benefits provided is less than ten percent (10%) of the total value of the benefits provided over the life of the policy. These values shall be measured as of the date of issue.

G. "Long-term care insurance" means an insurance policy or a rider advertised, marketed, offered, or designed to provide coverage for not less than twelve consecutive months for each covered person on an expense incurred, indemnity, prepaid, or other basis, for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital. The term includes group and individual annuities and life insurance policies or riders that provide directly or that supplement long term care insurance. It also includes a policy or rider that provides for payment of benefits based upon cognitive impairment or the loss of functional capacity. The term also includes qualified long term care contracts. Long term care insurance may be issued by insurers, fraternal benefit societies, nonprofit health, hospital, and medical service corporations, prepaid health plans, health maintenance organizations, or a similar organization to the extent they otherwise are authorized to issue life or health insurance. Long term care insurance does not include an insurance policy offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income or related asset protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage. With regard to life insurance, this term does not include life insurance policies that accelerate the death benefit specifically for one or more of the qualifying events of terminal illness, medical conditions requiring extraordinary medical intervention, or permanent institutional confinement, and that provide the option of a lump-sum payment for those benefits and where neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long term care. Notwithstanding another provision of this regulation, a product advertised, marketed, or offered as long term care insurance is subject to the provisions of this regulation.

H. "Partnership policies or Partnership program" means those long term care insurance policies that meet the requirements of the Federal Long Term Care Partnership Program as authorized under the Deficit Reduction Act of 2005, Section 6021.

I. "Policy" means any policy, contract, subscriber agreement, rider, or endorsement delivered or issued for delivery in this State by an insurer, fraternal benefit society, nonprofit health, hospital, or medical service corporation, prepaid health plan, health maintenance organization, or any similar organization.

J. "Qualified actuary" means a member in good standing of the American Academy of Actuaries.

K.(1) "Qualified long term care insurance contract" or "federally tax-qualified long term care insurance contract" means an individual or a group insurance contract that meets the requirements of Section 7702B(b) of the Internal Revenue Code of 1986, as amended, as follows:

(a) the only insurance protection provided under the contract is coverage of qualified long term care services. A contract does not fail to satisfy the requirements of this item by reason of payments being made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate;

(b) the contract does not pay or reimburse expenses incurred for services or items to the extent that the expenses are reimbursable under Title XVIII of the Social Security Act, as amended, or would be so reimbursable but for the application of a deductible or coinsurance amount. The requirements of this sub item do not apply to expenses that are reimbursable under Title XVIII of the Social Security Act only as a secondary payor. A contract does not fail to satisfy the requirements of this subitem by reason of payments being made on a per diem or other periodic basis without regard to the expenses incurred during the period to which payments relate;

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(c) the contract is guaranteed renewable, within the meaning of Section 7702B(b)(1)(C) of the Internal Revenue Code of 1986, as amended;

(d) the contract does not provide for a cash surrender value or other money that can be paid, assigned, pledged as collateral for a loan, or borrowed except as provided in subsubitem (e);

(e) all refunds of premiums, and all policyholder dividends or similar amounts, under the contract are to be applied as a reduction in future premiums or to increase future benefits, except that a refund if death occurs of the insured or a complete surrender or cancellation of the contract cannot exceed the aggregate premiums paid under the contract; and

(f) the contract meets the consumer protection provisions provided in Section 7702B(g) of the Internal Revenue Code of 1986, as amended.

(2)“Qualified long term care insurance contract” or “federally tax-qualified long term care insurance contract” also means the portion of a life insurance contract that provides long term care insurance coverage by rider or as part of the contract and that satisfies the requirements of Section 7702B(b) and (e) of the Internal Revenue Code of 1986, as amended.

L. “Similar policy forms” means all of the long term care insurance policies and certificates issued by an insurer in the same long term care benefit classification as the policy form being considered. Certificates of groups that meet the definition in Section 4E(1) of this Regulation are not considered similar to certificates or policies otherwise issued as long term care insurance, but are similar to other comparable certificates with the same long term care benefit classifications. For purposes of determining similar policy forms, long term care benefit classifications are defined as follows: institutional long term care benefits only, non-institutional long term care benefits only, or comprehensive long term care benefits.

### Section 5. Policy Definitions.

No long term care insurance policy delivered or issued for delivery in this state shall use the terms set forth below, unless the terms are defined in the policy and the definitions satisfy the following requirements:

A. “Activities of daily living” means at least bathing, continence, dressing, eating, toileting and transferring.

B. “Acute condition” means that the individual is medically unstable. Such an individual requires frequent monitoring by medical professionals, such as physicians and registered nurses, in order to maintain his or her health status.

C. “Adult day care” means a program for six (6) or more individuals, of social and health-related services provided during the day in a community group setting for the purpose of supporting frail, impaired elderly or other disabled adults who can benefit from care in a group setting outside the home.

D. “Bathing” means washing oneself by sponge bath; or in either a tub or shower, including the task of getting into or out of the tub or shower.

E. “Cognitive impairment” means a deficiency in a person’s short or long term memory, orientation as to person, place and time, deductive or abstract reasoning, or judgment as it relates to safety awareness.

F. “Continence” means the ability to maintain control of bowel and bladder function; or, when unable to maintain control of bowel or bladder function, the ability to perform associated personal hygiene (including caring for catheter or colostomy bag).

G. “Dressing” means putting on and taking off all items of clothing and any necessary braces, fasteners or artificial limbs.

H. “Eating” means feeding oneself by getting food into the body from a receptacle (such as a plate, cup or table) or by a feeding tube or intravenously.

I. “Hands-on assistance” means physical assistance (minimal, moderate or maximal) without which the individual would not be able to perform the activity of daily living.

J. “Home health care services” means medical and nonmedical services, provided to ill, disabled or infirm persons in their residences. Such services may include homemaker services, assistance with activities of daily living and respite care services.

K. “Medicare” means “The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended,” or “Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof,” or words of similar import.

L. "Mental or nervous disorder" shall not be defined to include more than neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder.

M. "Personal care" means the provision of hands-on services to assist an individual with activities of daily living.

N. "Skilled nursing care," "personal care," "home care," "specialized care," "assisted living care" and other services shall be defined in relation to the level of skill required, the nature of the care and the setting in which care must be delivered.

O. "Toileting" means getting to and from the toilet, getting on and off the toilet, and performing associated personal hygiene.

P. "Transferring" means moving into or out of a bed, chair or wheelchair.

Q. All providers of services, including but not limited to "skilled nursing facility," "extended care facility," "convalescent nursing home," "personal care facility," "specialized care providers," "assisted living facility," and "home care agency" shall be defined in relation to the services and facilities required to be available and the licensure, certification, registration or degree status of those providing or supervising the services. When the definition requires that the provider be appropriately licensed, certified or registered, it shall also state what requirements a provider must meet in lieu of licensure, certification or registration when the state in which the service is to be furnished does not require a provider of these services to be licensed, certified or registered, or when the state licenses, certifies or registers the provider of services under another name.

#### Section 6. Policy Practices and Provisions

A. Renewability. The terms "guaranteed renewable" and "noncancellable" shall not be used in any individual long term care insurance policy without further explanatory language in accordance with the disclosure requirements of Section 9 of this Regulation.

(1) A policy issued to an individual shall not contain renewal provisions other than "guaranteed renewable" or "noncancellable."

(2) The term "guaranteed renewable" may be used only when the insured has the right to continue the long term care insurance in force by the timely payment of premiums and when the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that rates may be revised by the insurer on a class basis.

(3) The term "noncancellable" may be used only when the insured has the right to continue the long term care insurance in force by the timely payment of premiums during which period the insurer has no right to unilaterally make any change in any provision of the insurance or in the premium rate.

(4) The term "level premium" may only be used when the insurer does not have the right to change the premium.

(5) In addition to the other requirements of this Subsection, a qualified long term care insurance contract shall be guaranteed renewable, within the meaning of Section 7702B (b)(1)(C) of the Internal Revenue Code of 1986, as amended.

B. Limitations and Exclusions. A policy may not be delivered or issued for delivery in this state as long term care insurance if the policy limits or excludes coverage by type of illness, treatment, medical condition or accident, except as follows:

- (1) Preexisting conditions or diseases;
- (2) Mental or nervous disorders; however, this shall not permit exclusion or limitation of benefits on the basis of Alzheimer's Disease;
- (3) Alcoholism and drug addiction;
- (4) Illness, treatment or medical condition arising out of:
  - (a) War or act of war (whether declared or undeclared);
  - (b) Participation in a felony, riot or insurrection;
  - (c) Service in the armed forces or units auxiliary thereto;
  - (d) Suicide (sane or insane), attempted suicide or intentionally self-inflicted injury; or
  - (e) Aviation (this exclusion applies only to non-fare-paying passengers);
- (5) Treatment provided in a government facility (unless otherwise required by law), services for which benefits are available under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability or occupational disease law, or any motor vehicle no-fault law,

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services provided by a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance;

(6) Expenses for services or items available or paid under another long term care insurance or health insurance policy;

(7) In the case of a qualified long term care insurance contract, expenses for services or items to the extent that the expenses are reimbursable under Title XVIII of the Social Security Act or would be so reimbursable but for the application of a deductible or coinsurance amount;

(8) This Subsection is not intended to prohibit exclusions and limitations by type of provider. However, no long term care issuer may deny a claim because services are provided in a state other than the state of policy issue under the following conditions:

(a) When the state other than the state of policy issue does not have the provider licensing, certification or registration required in the policy, but where the provider satisfies the policy requirements outlined for providers in lieu of licensure, certification or registration; or

(b) When the state other than the state of policy issue licenses, certifies or registers the provider under another name. For purposes of this Subsection, "state of policy issue" means the state in which the individual policy or certificate was originally issued.

(9) This Subsection is not intended to prohibit territorial limitations.

C. Extension of Benefits. Termination of long term care insurance shall be without prejudice to any benefits payable for institutionalization if the institutionalization began while the long term care insurance was in force and continues without interruption after termination. The extension of benefits beyond the period the long term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits and may be subject to any policy waiting period, and all other applicable provisions of the policy.

D. Continuation or Conversion.

(1) Group long term care insurance issued in this state on or after the effective date of this Section shall provide covered individuals with a basis for continuation or conversion of coverage.

(2) For the purposes of this Section, "a basis for continuation of coverage" means a policy provision that maintains coverage under the existing group policy when the coverage would otherwise terminate and which is subject only to the continued timely payment of premium when due. Group policies that restrict provision of benefits and services to, or contain incentives to use certain providers or facilities may provide continuation benefits that are substantially equivalent to the benefits of the existing group policy. The Director shall make a determination as to the substantial equivalency of benefits, and in doing so, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity.

(3) For the purposes of this Section, "a basis for conversion of coverage" means a policy provision that an individual whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class, and who has been continuously insured under the group policy (and any group policy which it replaced), for at least six months immediately prior to termination, shall be entitled to the issuance of a converted policy by the insurer under whose group policy he or she is covered, without evidence of insurability.

(4) For the purposes of this Section, "converted policy" means an individual policy of long term care insurance providing benefits identical to or benefits determined by the Director to be substantially equivalent to or in excess of those provided under the group policy from which conversion is made. Where the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use certain providers or facilities, the Director, in making a determination as to the substantial equivalency of benefits, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity.

(5) Written application for the converted policy shall be made and the first premium due, if any, shall be paid as directed by the insurer not later than thirty-one (31) days after termination of coverage under the group policy. The converted policy shall be issued effective on the day following the termination of coverage under the group policy, and shall be renewable annually.

(6) Unless the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. Where the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy replaced.

(7) Continuation of coverage or issuance of a converted policy shall be mandatory, except where:

(a) Termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or

(b) The terminating coverage is replaced not later than thirty-one (31) days after termination, by group coverage effective on the day following the termination of coverage:

(i) Providing benefits identical to or benefits determined by the Director to be substantially equivalent to or in excess of those provided by the terminating coverage; and

(ii) The premium for which is calculated in a manner consistent with the requirements of Paragraph (6) of this Section.

(8) Notwithstanding any other provision of this Section, a converted policy issued to an individual who at the time of conversion is covered by another long term care insurance policy that provides benefits on the basis of incurred expenses, may contain a provision that results in a reduction of benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than 100 percent of incurred expenses. The provision shall only be included in the converted policy if the converted policy also provides for a premium decrease or refund which reflects the reduction in benefits payable.

(9) The converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, shall not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect.

(10) Notwithstanding any other provision of this Section, an insured individual whose eligibility for group long term care coverage is based upon his or her relationship to another person shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage.

(11) For the purposes of this Section a "managed-care plan" is a health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management or use of specific provider networks.

#### E. Discontinuance and Replacement.

If a group long term care policy is replaced by another group long term care policy issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination. Coverage provided or offered to individuals by the insurer and premiums charged to persons under the new group policy:

(1) Shall not result in an exclusion for preexisting conditions that would have been covered under the group policy being replaced; and

(2) Shall not vary or otherwise depend on the individual's health or disability status, claim experience or use of long term care services.

F.(1)The premium charged to an insured shall not increase due to either:

(a) The increasing age of the insured at ages beyond sixty-five (65); or

(b) The duration the insured has been covered under the policy.

(2) The purchase of additional coverage shall not be considered a premium rate increase, but for purposes of the calculation required under Section 26 of this Regulation, the portion of the premium attributable to the additional coverage shall be added to and considered part of the initial annual premium.

(3) A reduction in benefits shall not be considered a premium change, but for purpose of the calculation required under Section 26 of this Regulation, the initial annual premium shall be based on the reduced benefits.

#### G. Electronic Enrollment for Group Policies.

(1) In the case of a group defined in Section 4E(1) of this Regulation, any requirement that a signature of an insured be obtained by an agent or insurer shall be deemed satisfied if:

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(a)The consent is obtained by telephonic or electronic enrollment by the group policyholder or insurer. A verification of enrollment information shall be provided to the enrollee;

(b)The telephonic or electronic enrollment provides necessary and reasonable safeguards to assure the accuracy, retention and prompt retrieval of records; and

(c)The telephonic or electronic enrollment provides necessary and reasonable safeguards to assure that the confidentiality of individually identifiable information and “privileged information” pursuant to Sections 501, 505(b), and 507 of the Gramm-Leach-Bliley Act, codified at 15 U.S.C. 6801, 6805(b) and 6807 and Regulation 69-58.

(2) The insurer shall make available, upon request of the Director, records that will demonstrate the insurer’s ability to confirm enrollment and coverage amounts.

### Section 7. Unintentional Lapse

Each insurer offering long term care insurance shall, as a protection against unintentional lapse, comply with the following:

A. (1) Notice before lapse or termination. No individual long term care policy or certificate shall be issued until the insurer has received from the applicant either a written designation of at least one person, in addition to the applicant, who is to receive notice of lapse or termination of the policy or certificate for nonpayment of premium, or a written waiver dated and signed by the applicant electing not to designate additional persons to receive notice. The applicant has the right to designate at least one person who is to receive the notice of termination, in addition to the insured. Designation shall not constitute acceptance of any liability on the third party for services provided to the insured. The form used for the written designation must provide space clearly designated for listing at least one person. The designation shall include each person’s *full name* and *home address*. In the case of an applicant who elects not to designate an additional person, the waiver shall state: “Protection against unintended lapse. I understand that I have the right to designate at least one person other than myself to receive notice of lapse or termination of this long term care insurance policy for nonpayment of premium. I understand that notice will not be given until thirty (30) days after a premium is due and unpaid. I elect NOT to designate a person to receive this notice.” The insurer shall notify the insured of the right to change this written designation, no less often than once every two (2) years.

(2) When the policyholder or certificate holder pays premium for a long term care insurance policy or certificate through a payroll or pension deduction plan, the requirements contained in Subsection A(1) of this Section need not be met until sixty (60) days after the policyholder or certificate holder is no longer on such a payment plan. The application or enrollment form for such policies or certificates shall clearly indicate the payment plan selected by the applicant.

(3) Lapse or termination for nonpayment of premium. No individual long term care policy or certificate shall lapse or be terminated for nonpayment of premium unless the insurer, at least thirty (30) days before the effective date of the lapse or termination, has given notice to the insured and to those persons designated pursuant to Subsection A(1) of this Section, at the address provided by the insured for purposes of receiving notice of lapse or termination. Notice shall be given by first class United States mail, postage prepaid; and notice may not be given until thirty (30) days after a premium is due and unpaid. Notice shall be deemed to have been given as of five (5) days after the date of mailing.

B. Reinstatement. In addition to the requirement in Subsection A of this Section, a long term care insurance policy or certificate shall include a provision that provides for reinstatement of coverage, in the event of lapse if the insurer is provided proof that the policyholder or certificate holder was cognitively impaired or had a loss of functional capacity before the grace period contained in the policy expired. This option shall be available to the insured if requested within five (5) months after termination and shall allow for the collection of past due premium, where appropriate. The standard of proof of cognitive impairment or loss of functional capacity shall not be more stringent than the benefit eligibility criteria on cognitive impairment or the loss of functional capacity contained in the policy and certificate.

## Section 8. Required Disclosure Provisions

A. Renewability. Individual long term care insurance policies shall contain a renewability provision.

(1) The provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state that the coverage is guaranteed renewable or noncancellable. This provision shall not apply to policies that do not contain a renewability provision, and under which the right to nonrenew is reserved solely to the policyholder.

(2) A long term care insurance policy or certificate, other than one where the insurer does not have the right to change the premium, shall include a statement that premium rates may change.

B. Riders and Endorsements. Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual long term care insurance policy, all riders or endorsements added to an individual long term care insurance policy after date of issue or at reinstatement or renewal that reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing signed by the insured, except if the increased benefits or coverage are required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy, rider or endorsement.

C. Payment of Benefits. A long term care insurance policy that provides for the payment of benefits based on standards described as “usual and customary,” “reasonable and customary” or words of similar import shall include a definition of these terms and an explanation of the terms in its accompanying outline of coverage.

D. Limitations. If a long term care insurance policy or certificate contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled as “Preexisting Condition Limitations.”

E. Other Limitations or Conditions on Eligibility for Benefits. A long term care insurance policy or certificate containing any limitations or conditions for eligibility other than those prohibited in S.C. Code Section 38-72-60(D)(2) shall set forth a description of the limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy or certificate and shall label such paragraph “Limitations or Conditions on Eligibility for Benefits.”

F. Disclosure of Tax Consequences. With regard to life insurance policies that provide an accelerated benefit for long term care, a disclosure statement is required at the time of application for the policy or rider and at the time the accelerated benefit payment request is submitted that receipt of these accelerated benefits may be taxable, and that assistance should be sought from a personal tax advisor. The disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related documents. This Subsection shall not apply to qualified long term care insurance contracts.

G. Benefit Triggers. Activities of daily living and cognitive impairment shall be used to measure an insured’s need for long term care and shall be described in the policy or certificate in a separate paragraph and shall be labeled “Eligibility for the Payment of Benefits.” Any additional benefit triggers shall also be explained in this Section. If these triggers differ for different benefits, explanation of the trigger shall accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too shall be specified.

H. A qualified long term care insurance contract shall include a disclosure statement in the policy and in the outline of coverage as contained in Section 31(E)(3) of this Regulation that the policy is intended to be a qualified long term care insurance contract under Section 7702B(b) of the Internal Revenue Code of 1986, as amended.

I. A nonqualified long term care insurance contract shall include a disclosure statement in the policy and in the outline of coverage as contained in Section 31(E)(3) of this Regulation that the policy is not intended to be a qualified long term care insurance contract.

## Section 9. Required Disclosure of Rating Practices to Consumers

A. This Section shall apply as follows:

(1) Except as provided in Paragraph (2) of this Subsection, this Section applies to any long term care policy or certificate issued in this state on or after 6 months from the effective date of this Regulation.

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(2) For certificates issued on or after the effective date of this amended regulation under a group long term care insurance policy as defined in Section 4E(1) of this Regulation which policy was in force at the time this amended regulation became effective, the provisions of this Section shall apply on the policy anniversary following one year from the effective date of this Regulation.

B. Other than policies for which no applicable premium rate or rate schedule increases can be made, insurers shall provide all of the information listed in this Subsection to the applicant at the time of application or enrollment, unless the method of application does not allow for delivery at that time. In such a case, an insurer shall provide all of the information listed in this Section to the applicant no later than at the time of delivery of the policy or certificate.

(1) A statement that the policy may be subject to rate increases in the future;

(2) An explanation of potential future premium rate revisions, and the policyholder's or certificate holder's option in the event of a premium rate revision;

(3) The premium rate or rate schedules applicable to the applicant that will be in effect until a request is made for an increase;

(4) A general explanation for applying premium rate or rate schedule adjustments that shall include:

(a) A description of when premium rate or rate schedule adjustments will be effective (e.g., next anniversary date, next billing date, etc.); and

(b) The right to a revised premium rate or rate schedule as provided in Paragraph (3) if the premium rate or rate schedule is changed;

(5) (a) Information regarding each premium rate increase on this policy form or similar policy forms over the past ten (10) years for this state or any other state that, at a minimum, identifies:

(i) The policy forms for which premium rates have been increased;

(ii) The calendar years when the form was available for purchase; and

(iii) The amount or percent of each increase. The percentage may be expressed as a percentage of the premium rate prior to the increase, and may also be expressed as minimum and maximum percentages if the rate increase is variable by rating characteristics.

(b) The insurer may, in a fair manner, provide additional explanatory information related to the rate increases.

(c) An insurer shall have the right to exclude from the disclosure premium rate increases that only apply to blocks of business acquired from other nonaffiliated insurers or the long term care policies acquired from other nonaffiliated insurers when those increases occurred prior to the acquisition.

(d) If an acquiring insurer files for a rate increase on a long term care policy form acquired from nonaffiliated insurers or a block of policy forms acquired from nonaffiliated insurers on or before the later of the effective date of this Section or the end of a twenty-four-month period following the acquisition of the block or policies, the acquiring insurer may exclude that rate increase from the disclosure. However, the nonaffiliated selling company shall include the disclosure of that rate increase in accordance with Subparagraph (a) of this paragraph.

(e) If the acquiring insurer in Subparagraph (d) above files for a subsequent rate increase, even within the twenty-four-month period, on the same policy form acquired from nonaffiliated insurers or block of policy forms acquired from nonaffiliated insurers referenced in Subparagraph (d), the acquiring insurer shall make all disclosures required by Paragraph (5), including disclosure of the earlier rate increase referenced in Subparagraph (d).

C. An applicant shall sign an acknowledgement at the time of application, unless the method of application does not allow for signature at that time, that the insurer made the disclosure required under Subsection B(1) and (5). If due to the method of application the applicant cannot sign an acknowledgement at the time of application, the applicant shall sign no later than at the time of delivery of the policy or certificate.

D. An insurer shall use the forms in Appendices B and F to comply with the requirements of Subsections B and C of this Section.

E. An insurer shall provide notice of an upcoming premium rate schedule increase to all policyholders or certificate holders, if applicable, at least forty-five (45) days prior to the implementation of the premium rate schedule increase by the insurer. The notice shall include the information required by Subsection B when the rate increase is implemented.

Section 10. Initial Filing Requirements

A. This Section applies to any long term care policy issued in this state on or after six months from the effective date of this Regulation.

B. An insurer shall provide the information listed in this Subsection to the Director thirty (30) days prior to making a long term care insurance form available for sale.

(1) A copy of the disclosure documents required in Section 9 of this Regulation; and

(2) An actuarial certification consisting of at least the following:

(a) A statement that the initial premium rate schedule is sufficient to cover anticipated costs under moderately adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated;

(b) A statement that the policy design and coverage provided have been reviewed and taken into consideration;

(c) A statement that the underwriting and claims adjudication processes have been reviewed and taken into consideration;

(d) A complete description of the basis for contract reserves that are anticipated to be held under the form, to include:

(i) Sufficient detail or sample calculations provided so as to have a complete depiction of the reserve amounts to be held;

(ii) A statement that the assumptions used for reserves contain reasonable margins for adverse experience;

(iii) A statement that the net valuation premium for renewal years does not increase (except for attained-age rating where permitted); and

(iv) A statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses; or if such a statement cannot be made, a complete description of the situations where this does not occur;

(I) An aggregate distribution of anticipated issues may be used as long as the underlying gross premiums maintain a reasonably consistent relationship;

(II) If the gross premiums for certain age groups appear to be inconsistent with this requirement, the Director may request a demonstration under Subsection C based on a standard age distribution; and

(e)(i) A statement that the premium rate schedule is not less than the premium rate schedule for existing similar policy forms also available from the insurer except for reasonable differences attributable to benefits; or

(ii) A comparison of the premium schedules for similar policy forms that are currently available from the insurer with an explanation of the differences.

C. (1) The Director may request an actuarial demonstration that benefits are reasonable in relation to premiums. The actuarial demonstration shall include either premium and claim experience on similar policy forms, adjusted for any premium or benefit differences, relevant and credible data from other studies, or both.

(2) In the event the Director asks for additional information under this provision, the period in Subsection B of this Section does not include the period during which the insurer is preparing the requested information.

Section 11. Prohibition Against Post-Claims Underwriting

A. All applications for long term care insurance policies or certificates except those that are guaranteed issue shall contain clear and unambiguous questions designed to ascertain the health condition of the applicant.

B. (1) If an application for long term care insurance contains a question that asks whether the applicant has had medication prescribed by a physician, it must also ask the applicant to list the medication that has been prescribed.

(2) If the medications listed in the application were known by the insurer, or should have been known at the time of application, to be directly related to a medical condition for which coverage would otherwise be denied, then the policy or certificate shall not be rescinded for that condition.

C. Except for policies or certificates which are guaranteed issue:

(1) The following language shall be set out conspicuously and in close conjunction with the applicant's signature block on an application for a long term care insurance policy or certificate:

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Caution: If your answers on this application are incorrect or untrue, the [company] has the right to deny benefits or rescind your policy.

(2) The following language, or language substantially similar to the following, shall be set out conspicuously on the long term care insurance policy or certificate at the time of delivery:

Caution: The issuance of this long term care insurance [policy] [certificate] is based upon your responses to the questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address]

(3) Prior to issuance of a long term care policy or certificate to an applicant age eighty (80) or older, the insurer shall obtain one of the following:

- (a) A report of a physical examination;
- (b) An assessment of functional capacity;
- (c) An attending physician's statement; or
- (d) Copies of medical records.

D. A copy of the completed application or enrollment form (whichever is applicable) shall be delivered to the insured no later than at the time of delivery of the policy or certificate unless it was retained by the applicant at the time of application.

E. Every insurer or other entity selling or issuing long term care insurance benefits shall maintain a record of all policy or certificate rescissions, both state and countrywide, except those that the insured voluntarily effectuated and shall annually furnish this information to the insurance Director in the format prescribed by the National Association of Insurance Commissioners in Appendix A.

### Section 12. Minimum Standards for Home Health and Community Care Benefits in Long Term Care Insurance Policies

A. A long term care insurance policy or certificate shall not, if it provides benefits for home health care or community care services, limit or exclude benefits:

- (1) By requiring that the insured or claimant would need care in a skilled nursing facility if home health care services were not provided;
- (2) By requiring that the insured or claimant first or simultaneously receive nursing or therapeutic services, or both, in a home, community or institutional setting before home health care services are covered;
- (3) By limiting eligible services to services provided by registered nurses or licensed practical nurses;
- (4) By requiring that a nurse or therapist provide services covered by the policy that can be provided by a home health aide, or other licensed or certified home care worker acting within the scope of his or her licensure or certification;
- (5) By excluding coverage for personal care services provided by a home health aide;
- (6) By requiring that the provision of home health care services be at a level of certification or licensure greater than that required by the eligible service;
- (7) By requiring that the insured or claimant have an acute condition before home health care services are covered;
- (8) By limiting benefits to services provided by Medicare-certified agencies or providers; or
- (9) By excluding coverage for adult day care services.

B. A long term care insurance policy or certificate, if it provides for home health or community care services, shall provide total home health or community care coverage that is a dollar amount equivalent to at least one-half of one year's coverage available for nursing home benefits under the policy or certificate, at the time covered home health or community care services are being received. This requirement shall not apply to policies or certificates issued to residents of continuing care retirement communities.

C. Home health care coverage may be applied to the nonhome health care benefits provided in the policy or certificate when determining maximum coverage under the terms of the policy or certificate.

### Section 13. Requirement to Offer Inflation Protection

A. No insurer may offer a long term care insurance policy unless the insurer also offers to the policyholder in addition to any other inflation protection the option to purchase a policy that provides for benefit levels to increase with benefit maximums or reasonable durations which are meaningful to account for reasonably anticipated increases in the costs of long term care services covered by the policy. Insurers must offer to each policyholder, at the time of purchase, the option to purchase a policy with an inflation protection feature no less favorable than one of the following:

(1) Increases benefit levels annually in a manner so that the increases are compounded annually at a rate not less than five percent (5%);

(2) Guarantees the insured individual the right to periodically increase benefit levels without providing evidence of insurability or health status so long as the option for the previous period has not been declined. The amount of the additional benefit shall be no less than the difference between the existing policy benefit and that benefit compounded annually at a rate of at least five percent (5%) for the period beginning with the purchase of the existing benefit and extending until the year in which the offer is made;

(3) Covers a specified percentage of actual or reasonable charges and does not include a maximum specified indemnity amount or limit.

B. Where the policy is issued to a group, the required offer in Subsection A above shall be made to the group policyholder; except, if the policy is issued to a group as defined in Section 4E(4) of this Regulation to a continuing care retirement community, the offering shall be made to each proposed certificate holder.

C. The offer in Subsection A in this Section above shall not be required of life insurance policies or riders containing accelerated long term care benefits.

D. (1) Insurers shall include the following information in or with the outline of coverage:

(a) A graphic comparison of the benefit levels of a policy that increases benefits over the policy period with a policy that does not increase benefits. The graphic comparison shall show benefit levels over at least a twenty (20) year period.

(b) Any expected premium increases or additional premiums to pay for automatic or optional benefit increases.

(2) An insurer may use a reasonable hypothetical, or a graphic demonstration, for the purposes of this disclosure.

E. Inflation protection benefit increases under a policy which contains these benefits shall continue without regard to an insured's age, claim status or claim history, or the length of time the person has been insured under the policy.

F. An offer of inflation protection that provides for automatic benefit increases shall include an offer of a premium which the insurer expects to remain constant. The offer shall disclose in a conspicuous manner that the premium may change in the future unless the premium is guaranteed to remain constant.

G. (1) Inflation protection as provided in Subsection A(1) of this Section shall be included in a long term care insurance policy unless an insurer obtains a rejection of inflation protection signed by the policyholder as required in this Subsection. The rejection may be either in the application or on a separate form.

(2) The rejection shall be considered a part of the application and shall state:

I have reviewed the outline of coverage and the graphs that compare the benefits and premiums of this policy with and without inflation protection. Specifically, I have reviewed Plans \_\_\_\_\_, and I reject inflation protection.

### Section 14. Requirements for Application Forms and Replacement Coverage

A. Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another long term care insurance policy or certificate in force or whether a long term care policy or certificate is intended to replace any other accident and sickness or long term care policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent, except where the coverage is sold without an agent, containing the questions may be used. With regard to a replacement policy issued to a group as defined in Section 4E(1) of this Regulation, the following questions may be modified only to the extent necessary to elicit information about health or long term care insurance policies other than the group policy being replaced, provided that the certificate holder has been notified of the replacement.

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(1) Do you have another long term care insurance policy or certificate in force (including health care service contract, health maintenance organization contract)?

(2) Did you have another long term care insurance policy or certificate in force during the last twelve (12) months?

(a) If so, with which company?

(b) If that policy lapsed, when did it lapse?

(3) Are you covered by Medicaid?

(4) Do you intend to replace any of your medical or health insurance coverage with this policy [certificate]?

B. Agents shall list any other health insurance policies they have sold to the applicant.

(1) List policies sold that are still in force.

(2) List policies sold in the past five (5) years that are no longer in force.

C. Solicitations Other than Direct Response. Upon determining that a sale will involve replacement, an insurer; other than an insurer using direct response solicitation methods, or its agent; shall furnish the applicant, prior to issuance or delivery of the individual long term care insurance policy, a notice regarding replacement of accident and sickness or long term care coverage. One copy of the notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. The required notice shall be provided in the following manner:

**NOTICE TO APPLICANT REGARDING REPLACEMENT OF INDIVIDUAL ACCIDENT AND SICKNESS OR LONG-TERM CARE INSURANCE**

[Insurance company’s name and address]

**SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.**

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing accident and sickness or long term care insurance and replace it with an individual long term care insurance policy to be issued by [company name] Insurance Company. Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness or long term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long term care coverage is a wise decision.

\_\_\_\_\_  
(Signature of Agent, Broker or Other Representative)

[Typed Name and Address of Agent or Broker]

The above “Notice to Applicant” was delivered to me on:

\_\_\_\_\_  
(Applicant’s Signature)

**STATEMENT TO APPLICANT BY AGENT [BROKER OR OTHER REPRESENTATIVE]:**  
 (Use additional sheets, as necessary.)

I have reviewed your current medical or health insurance coverage. I believe the replacement of insurance involved in this transaction materially improves your position. My conclusion has taken into account the following considerations, which I call to your attention:

1. Health conditions that you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate may not contain new preexisting conditions or probationary periods. The insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

3. If you are replacing existing long term care insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

4. If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before your sign it, reread it carefully to be certain that all information has been properly recorded.

D. Direct Response Solicitations. Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or long term care coverage to the applicant upon issuance of the policy. The required notice shall be provided in the following manner:

**NOTICE TO APPLICANT REGARDING REPLACEMENT  
 OF ACCIDENT AND SICKNESS OR LONG-TERM CARE INSURANCE**

[Insurance company's name and address]

**SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.**

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing accident and sickness or long term care insurance and replace it with the long term care insurance policy delivered herewith issued by [company name] Insurance Company. Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness or long term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long term care coverage is a wise decision.

1. Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate may not contain new preexisting conditions or probationary periods. Your insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

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3. If you are replacing existing long term care insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

4. [To be included only if the application is attached to the policy.] If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to [company name and address] within thirty (30) days if any information is not correct and complete, or if any past medical history has been left out of the application.

E. Where replacement is intended, the replacing insurer shall notify, in writing, the existing insurer of the proposed replacement. The existing policy shall be identified by the insurer, name of the insured and policy number or address including zip code. Notice shall be made within five (5) working days from the date the application is received by the insurer or the date the policy is issued, whichever is sooner.

F. Life Insurance policies that accelerate benefits for long term care shall comply with this Section if the policy being replaced is a long term care insurance policy. If the policy being replaced is a life insurance policy, the insurer shall comply with the replacement requirements of Regulation 69-12.1. If a life insurance policy that accelerates benefits for long term care is replaced by another such policy, the replacing insurer shall comply with the long term care replacement requirements.

### Section 15. Reporting Requirements

A. Every insurer shall maintain records for each agent of that agent's amount of replacement sales as a percent of the agent's total annual sales and the amount of lapses of long term care insurance policies sold by the agent as a percent of the agent's total annual sales.

B. Every insurer shall report annually by June 30 the ten percent (10%) of its agents with the greatest percentages of lapses and replacements as measured by Subsection A above. (Appendix G)

C. Reported replacement and lapse rates do not alone constitute a violation of insurance laws or necessarily imply wrongdoing. The reports are for the purpose of reviewing more closely agent activities regarding the sale of long term care insurance.

D. Every insurer shall report annually by June 30 the number of lapsed policies as a percent of its total annual sales and as a percent of its total number of policies in force as of the end of the preceding calendar year. (Appendix G)

E. Every insurer shall report annually by June 30 the number of replacement policies sold as a percent of its total annual sales and as a percent of its total number of policies in force as of the preceding calendar year. (Appendix G)

F. Every insurer shall report annually by June 30, for qualified long term care insurance contracts, the number of claims denied for each class of business, expressed as a percentage of claims denied. (Appendix E).

G. For purposes of this Section:

(1) "Policy" means only long term care insurance;

(2) Subject to Paragraph (3) in this Subsection, "claim" means a request for payment of benefits under an in force policy regardless of whether the benefit claimed is covered under the policy or any terms or conditions of the policy have been met;

(3) "Denied" means the insurer refuses to pay a claim for any reason other than for claims not paid for failure to meet the waiting period or because of an applicable preexisting condition; and

(4) "Report" means on a statewide basis.

H. Reports required under this Section shall be filed with the Director.

### Section 16. Licensing

A producer is not authorized to sell, solicit or negotiate with respect to long term care insurance except as authorized by S.C. Code Section 38-43-10 et seq.

## Section 17. Powers of Director

The Director may, upon written request, waive or grant an exemption to a specific provision or provisions of this regulation with respect to a specific long term care insurance policy or certificate upon a finding that:

- A. The modification or suspension would be in the best interest of the insureds;
- B. The purposes to be achieved could not be effectively or efficiently achieved without the modification or suspension; and
- C. (1) The modification or suspension is necessary to the development of an innovative and reasonable approach for insuring long term care; or
  - (2) The policy or certificate is to be issued to residents of a life care or continuing care retirement community or some other residential community for the elderly and the modification or suspension is reasonably related to the special needs or nature of such a community; or
  - (3) The modification or suspension is necessary to permit long term care insurance to be sold as part of, or in conjunction with, another insurance product.

## Section 18. Reserve Standards

A. When long term care benefits are provided through the acceleration of benefits under group or individual life policies or riders to such policies, policy reserves for the benefits shall be determined in accordance with S.C. Code Section 38-9-180. Claim reserves shall also be established in the case when the policy or rider is in claim status. Reserves for policies and riders subject to this Subsection should be based on the multiple decrement model utilizing all relevant decrements except for voluntary termination rates. Single decrement approximations are acceptable if the calculation produces essentially similar reserves, if the reserve is clearly more conservative, or if the reserve is immaterial. The calculations may take into account the reduction in life insurance benefits due to the payment of long term care benefits. However, in no event shall the reserves for the long term care benefit and the life insurance benefit be less than the reserves for the life insurance benefit assuming no long term care benefit. In the development and calculation of reserves for policies and riders subject to this Subsection, due regard shall be given to the applicable policy provisions, marketing methods, administrative procedures and all other considerations which have an impact on projected claim costs, including, but not limited to, the following:

- (1) Definition of insured events;
- (2) Covered long term care facilities;
- (3) Existence of home convalescence care coverage;
- (4) Definition of facilities;
- (5) Existence or absence of barriers to eligibility;
- (6) Premium waiver provision;
- (7) Renewability;
- (8) Ability to raise premiums;
- (9) Marketing method;
- (10) Underwriting procedures;
- (11) Claims adjustment procedures;
- (12) Waiting period;
- (13) Maximum benefit;
- (14) Availability of eligible facilities;
- (15) Margins in claim costs;
- (16) Optional nature of benefit;
- (17) Delay in eligibility for benefit;
- (18) Inflation protection provisions; and
- (19) Guaranteed insurability option.

Any applicable valuation morbidity table shall be certified as appropriate as a statutory valuation table by a member of the American Academy of Actuaries.

B. When long term care benefits are provided other than as in Subsection A above, reserves shall be determined in accordance with Regulation 69-7.

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### Section 19. Loss Ratio

A. This Section shall apply to all long term care insurance policies or certificates except those covered under Sections 10 and 20.

B. Benefits under long term care insurance policies shall be deemed reasonable in relation to premiums provided the expected loss ratio is at least sixty percent (60%), calculated in a manner which provides for adequate reserving of the long term care insurance risk. In evaluating the expected loss ratio, due consideration shall be given to all relevant factors, including:

- (1) Statistical credibility of incurred claims experience and earned premiums;
- (2) The period for which rates are computed to provide coverage;
- (3) Experienced and projected trends;
- (4) Concentration of experience within early policy duration;
- (5) Expected claim fluctuation;
- (6) Experience refunds, adjustments or dividends;
- (7) Renewability features;
- (8) All appropriate expense factors;
- (9) Interest;
- (10) Experimental nature of the coverage;
- (11) Policy reserves;
- (12) Mix of business by risk classification; and
- (13) Product features such as long elimination periods, high deductibles and high maximum limits.

C. Subsection B shall not apply to life insurance policies that accelerate benefits for long term care. A life insurance policy that funds long term care benefits entirely by accelerating the death benefit is considered to provide reasonable benefits in relation to premiums paid, if the policy complies with all of the following provisions:

(1) The interest credited internally to determine cash value accumulations, including long term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long term care set forth in the policy;

(2) The portion of the policy that provides life insurance benefits meets the nonforfeiture requirements of S.C. Code Section 38-63-510 et seq.;

(3) The policy meets the disclosure requirements contained in S.C. Code Section 38-72-10 et seq.;

(4) Any policy illustration that meets the applicable requirements of Regulation 69-40; and

(5) An actuarial memorandum is filed with the insurance department that includes:

(a) A description of the basis on which the long term care rates were determined;

(b) A description of the basis for the reserves;

(c) A summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;

(d) A description and a table of each actuarial assumption used. For expenses, an insurer must include percent of premium dollars per policy and dollars per unit of benefits, if any;

(e) A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;

(f) The estimated average annual premium per policy and the average issue age;

(g) A statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs; and

(h) A description of the effect of the long term care policy provision on the required premiums, nonforfeiture values and reserves on the underlying life insurance policy, both for active lives and those in long term care claim status.

## Section 20. Premium Rate Schedule Increases

## A. This Section shall apply as follows:

(1) Except as provided in Paragraph (2), this Section applies to any long term care policy or certificate issued in this state on or after July 1, 2010.

(2) For certificates issued on or after the effective date of this amended regulation under a group long term care insurance policy as defined in Section 4E(1) of this Regulation, which policy was in force at the time this amended regulation became effective, the provisions of this Section shall apply on the policy anniversary following January 1, 2011.

B. An insurer shall provide notice of a pending premium rate schedule increase, including an exceptional increase, to the Director at least thirty (30) days prior to the notice to the policyholders and shall include:

(1) Information required under Section 9 of this Regulation;

(2) Certification by a qualified actuary that:

(a) If the requested premium rate schedule increase is implemented and the underlying assumptions, which reflect moderately adverse conditions, are realized, no further premium rate schedule increases are anticipated;

(b) The premium rate filing is in compliance with the provisions of this Section;

(3) An actuarial memorandum justifying the rate schedule change request that includes:

(a) Lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase; and the method and assumptions used in determining the projected values, including reflection of any assumptions that deviate from those used for pricing other forms currently available for sale;

(i) Annual values for the five (5) years preceding and the three (3) years following the valuation date shall be provided separately;

(ii) The projections shall include the development of the lifetime loss ratio, unless the rate increase is an exceptional increase;

(iii) The projections shall demonstrate compliance with Subsection C; and

(iv) For exceptional increases,

(I) The projected experience should be limited to the increases in claims expenses attributable to the approved reasons for the exceptional increase; and

(II) In the event the Director determines as provided in Section 4A(4) of this Regulation that offsets may exist, the insurer shall use appropriate net projected experience;

(b) Disclosure of how reserves have been incorporated in this rate increase whenever the rate increase will trigger contingent benefit upon lapse;

(c) Disclosure of the analysis performed to determine why a rate adjustment is necessary, which pricing assumptions were not realized and why, and what other actions taken by the company have been relied on by the actuary;

(d) A statement that policy design, underwriting and claims adjudication practices have been taken into consideration; and

(e) In the event that it is necessary to maintain consistent premium rates for new certificates and certificates receiving a rate increase, the insurer will need to file composite rates reflecting projections of new certificates;

(4) A statement that renewal premium rate schedules are not greater than new business premium rate schedules except for differences attributable to benefits, unless sufficient justification is provided to the Director; and

(5) Sufficient information for review and approval of the premium rate schedule increase by the Director.

## C. All premium rate schedule increases shall be determined in accordance with the following requirements:

(1) Exceptional increases shall provide that seventy percent (70%) of the present value of projected additional premiums from the exceptional increase will be returned to policyholders in benefits;

(2) Premium rate schedule increases shall be calculated such that the sum of the accumulated value of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, without the inclusion of active life reserves, will not be less than the sum of the following:

(a) The accumulated value of the initial earned premium times fifty-eight percent (58%);

(b) Eighty-five percent (85%) of the accumulated value of prior premium rate schedule increases on an earned basis;

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- (c) The present value of future projected initial earned premiums times fifty-eight percent (58%); and
- (d) Eighty-five percent (85%) of the present value of future projected premiums not in Subparagraph (c) on an earned basis;

(3) In the event that a policy form has both exceptional and other increases, the values in Paragraph (2)(b) and (d) will also include seventy percent (70%) for exceptional rate increase amounts; and

(4) All present and accumulated values used to determine rate increases shall use the maximum valuation interest rate for contract reserves as specified in Regulation 69-7. The actuary shall disclose as part of the actuarial memorandum the use of any appropriate averages.

D. For each rate increase that is implemented, the insurer shall file for review and approval by the Director updated projections, as defined in Subsection B(3)(a), annually for the next three (3) years and include a comparison of actual results to projected values. The Director may extend the period to greater than three (3) years if actual results are not consistent with projected values from prior projections. For group insurance policies that meet the conditions in Subsection K, the projections required by this Subsection shall be provided to the policyholder in lieu of filing with the Director.

E. If any premium rate in the revised premium rate schedule is greater than 200 percent of the comparable rate in the initial premium schedule, lifetime projections, as defined in Subsection B(3)(a), shall be filed for review and approval by the Director every five (5) years following the end of the required period in Subsection D. For group insurance policies that meet the conditions in Subsection K, the projections required by this Subsection shall be provided to the policyholder in lieu of filing with the Director.

F.(1) If the Director has determined that the actual experience following a rate increase does not adequately match the projected experience and that the current projections under moderately adverse conditions demonstrate that incurred claims will not exceed proportions of premiums specified in Subsection C, the Director may require the insurer to implement any of the following:

- (a) Premium rate schedule adjustments; or
- (b) Other measures to reduce the difference between the projected and actual experience.

(2) In determining whether the actual experience adequately matches the projected experience, consideration should be given to Subsection B(3)(e), if applicable.

G.If the majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse, the insurer shall file:

(1) A plan, subject to Director approval, for improved administration or claims processing designed to eliminate the potential for further deterioration of the policy form requiring further premium rate schedule increases, or both, or to demonstrate that appropriate administration and claims processing have been implemented or are in effect; otherwise the Director may impose the condition in Subsection H of this Section; and

(2) The original anticipated lifetime loss ratio, and the premium rate schedule increase that would have been calculated according to Subsection C had the greater of the original anticipated lifetime loss ratio or fifty-eight percent (58%) been used in the calculations described in Subsection C(2)(a) and (c).

H.(1) For a rate increase filing that meets the following criteria, the Director shall review, for all policies included in the filing, the projected lapse rates and past lapse rates during the twelve (12) months following each increase to determine if significant adverse lapsation has occurred or is anticipated:

- (a) The rate increase is not the first rate increase requested for the specific policy form or forms;
- (b) The rate increase is not an exceptional increase; and
- (c) The majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse.

(2) In the event significant adverse lapsation has occurred, is anticipated in the filing or is evidenced in the actual results as presented in the updated projections provided by the insurer following the requested rate increase, the Director may determine that a rate spiral exists. Following the determination that a rate spiral exists, the Director may require the insurer to offer, without underwriting, to all in force insureds subject to the rate increase the option to replace existing coverage with one or more reasonably comparable products being offered by the insurer or its affiliates.

- (a) The offer shall:
  - (i) Be subject to the approval of the Director;
  - (ii) Be based on actuarially sound principles, but not be based on attained age; and

(iii) Provide that maximum benefits under any new policy accepted by an insured shall be reduced by comparable benefits already paid under the existing policy.

(b) The insurer shall maintain the experience of all the replacement insureds separate from the experience of insureds originally issued the policy forms. In the event of a request for a rate increase on the policy form, the rate increase shall be limited to the lesser of:

(i) The maximum rate increase determined based on the combined experience; and

(ii) The maximum rate increase determined based only on the experience of the insureds originally issued the form plus ten percent (10%).

I. If the Director determines that the insurer has exhibited a persistent practice of filing inadequate initial premium rates for long term care insurance, the Director may, in addition to the provisions of Subsection H of this Section, prohibit the insurer from either of the following:

(1) Filing and marketing comparable coverage for a period of up to five (5) years; or

(2) Offering all other similar coverages and limiting marketing of new applications to the products subject to recent premium rate schedule increases.

J. Subsections A through I shall not apply to policies for which the long term care benefits provided by the policy are incidental, as defined in Section 4B, if the policy complies with all of the following provisions:

(1) The interest credited internally to determine cash value accumulations, including long term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long term care set forth in the policy;

(2) The portion of the policy that provides insurance benefits other than long term care coverage meets the nonforfeiture requirements as applicable in any of the following:

(a) S.C. Code Section 38-63-510 et seq.;

(b) S.C. Code Section 38-69-210 et seq.; and

(c) Regulation 69-12;

(3) The policy meets the disclosure requirements of S.C. Code Section 38-72-60;

(4) An actuarial memorandum is filed with the insurance department that includes:

(a) A description of the basis on which the long term care rates were determined;

(b) A description of the basis for the reserves;

(c) A summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;

(d) A description and a table of each actuarial assumption used. For expenses, an insurer must include percent of premium dollars per policy and dollars per unit of benefits, if any;

(e) A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;

(f) The estimated average annual premium per policy and the average issue age;

(g) A statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs; and

(h) A description of the effect of the long term care policy provision on the required premiums, nonforfeiture values and reserves on the underlying insurance policy, both for active lives and those in long term care claim status.

K. Subsections F and H shall not apply to group insurance policies as defined in Section 4E(1) of this Regulation where:

(1) The policies insure 250 or more persons and the policyholder has 5,000 or more eligible employees of a single employer; or

(2) The policyholder, and not the certificate holders, pays a material portion of the premium, which shall not be less than twenty percent (20%) of the total premium for the group in the calendar year prior to the year a rate increase is filed.

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### Section 21. Filing Requirement

Prior to an insurer or similar organization offering group long term care insurance to a resident of this state pursuant to S.C. Code Section 38-72-50, it shall file with the Director evidence that the group policy or certificate thereunder has been approved by a state having statutory or regulatory long term care insurance requirements substantially similar to those adopted in this state.

### Section 22. Filing Requirements for Advertising

A. Every insurer, health care service plan or other entity providing long term care insurance or benefits in this state shall file a copy of any long term care insurance advertisement intended for use in this state whether through written, radio or television medium to the Director of Insurance of this state for review and approval by the Director to the extent it may be required under state law. In addition, all advertisements shall be retained by the insurer, health care service plan or other entity for at least three (3) years from the date the advertisement was first used.

B. The Director may exempt from these requirements any advertising form or material when, in the Director's opinion, this requirement may not be reasonably applied.

### Section 23. Standards for Marketing

A. Every insurer, health care service plan or other entity marketing long term care insurance coverage in this state, directly or through its producers, shall:

(1) Establish marketing procedures and agent training requirements to assure that:

(a) Any marketing activities, including any comparison of policies, by its agents or other producers will be fair and accurate; and

(b) Excessive insurance is not sold or issued.

(2) Display prominently by type, stamp or other appropriate means, on the first page of the outline of coverage and policy the following: "Notice to buyer: This policy may not cover all of the costs associated with long term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations."

(3) Provide copies of the disclosure forms required in Section 9C (Appendices B and F) to the applicant.

(4) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long term care insurance already has accident and sickness or long term care insurance and the types and amounts of any such insurance, except that in the case of qualified long term care insurance contracts, an inquiry into whether a prospective applicant or enrollee for long term care insurance has accident and sickness insurance is not required.

(5) Every insurer or entity marketing long term care insurance shall establish auditable procedures for verifying compliance with this Subsection A.

(6) If the state in which the policy or certificate is to be delivered or issued for delivery has a senior insurance counseling program approved by the Director, the insurer shall, at solicitation, provide written notice to the prospective policyholder and certificate holder that the program is available and the name, address and telephone number of the program.

(7) For long term care health insurance policies and certificates, use the terms "noncancellable" or "level premium" only when the policy or certificate conforms to Section 6 A(3) of this Regulation.

(8) Provide an explanation of contingent benefit upon lapse provided for in Section 28D(3), and, if applicable, the additional contingent benefit upon lapse provided to policies with fixed or limited premium paying periods in Section 28D(4).

B. In addition to the practices prohibited in Chapter 57 of Title 38, S.C. Code of Laws, the following acts and practices are prohibited:

(1) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on or convert any insurance policy or to take out a policy of insurance with another insurer.

(2) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(3) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

(4) Misrepresentation. Misrepresenting a material fact in selling or offering to sell a long term care insurance policy.

C.(1) With respect to the obligations set forth in this Subsection, the primary responsibility of an association, as defined in Section 4E(2) of this Regulation, when endorsing or selling long term care insurance shall be to educate its members concerning long term care issues in general so that its members can make informed decisions. Associations shall provide objective information regarding long term care insurance policies or certificates endorsed or sold by such associations to ensure that members of such associations receive a balanced and complete explanation of the features in the policies or certificates that are being endorsed or sold.

(2) The insurer shall file with the insurance department the following material:

- (a) The policy and certificate;
- (b) A corresponding outline of coverage; and
- (c) All advertisements requested by the insurance department.

(3) The association shall disclose in any long term care insurance solicitation:

(a) The specific nature and amount of the compensation arrangements (including all fees, commissions, administrative fees and other forms of financial support) that the association receives from endorsement or sale of the policy or certificate to its members; and

(b) A brief description of the process under which the policies and the insurer issuing the policies were selected.

(4) If the association and the insurer have interlocking directorates or trustee arrangements, the association shall disclose that fact to its members.

(5) The board of directors of associations selling or endorsing long term care insurance policies or certificates shall review and approve the insurance policies as well as the compensation arrangements made with the insurer.

(6) The association shall also:

(a) At the time of the association's decision to endorse, engage the services of a person with expertise in long term care insurance not affiliated with the insurer to conduct an examination of the policies, including its benefits, features, and rates and update the examination thereafter in the event of material change;

(b) Actively monitor the marketing efforts of the insurer and its agents; and

(c) Review and approve all marketing materials or other insurance communications used to promote sales or sent to members regarding the policies or certificates.

(d) Subparagraphs (a) through (c) shall not apply to qualified long term care insurance contracts.

(7) No group long term care insurance policy or certificate may be issued to an association unless the insurer files with the state insurance department the information required in this Subsection.

(8) The insurer shall not issue a long term care policy or certificate to an association or continue to market such a policy or certificate unless the insurer certifies annually that the association has complied with the requirements set forth in this Subsection.

(9) Failure to comply with the filing and certification requirements of this Section constitutes an unfair trade practice in violation of in Chapter 57 of Title 38, S.C. Code of Laws.

#### Section 24. Suitability

A. This Section shall not apply to life insurance policies that accelerate benefits for long term care.

B. Every insurer, health care service plan or other entity marketing long term care insurance (the "issuer") shall:

(1) Develop and use suitability standards to determine whether the purchase or replacement of long term care insurance is appropriate for the needs of the applicant;

(2) Train its agents in the use of its suitability standards; and

(3) Maintain a copy of its suitability standards and make them available for inspection upon request by the Director.

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C.(1) To determine whether the applicant meets the standards developed by the issuer, the agent and issuer shall develop procedures that take the following into consideration:

(a) The ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage;

(b) The applicant's goals or needs with respect to long term care and the advantages and disadvantages of insurance to meet these goals or needs; and

(c) The values, benefits and costs of the applicant's existing insurance, if any, when compared to the values, benefits and costs of the recommended purchase or replacement.

(2) The issuer, and where an agent is involved, the agent shall make reasonable efforts to obtain the information set out in Paragraph (1) above. The efforts shall include presentation to the applicant, at or prior to application, the "Long Term Care Insurance Personal Worksheet." The personal worksheet used by the issuer shall contain, at a minimum, the information in the format contained in Appendix B, in not less than twelve (12) point type. The issuer may request the applicant to provide additional information to comply with its suitability standards. A copy of the issuer's personal worksheet shall be filed with the Director.

(3) A completed personal worksheet shall be returned to the issuer prior to the issuer's consideration of the applicant for coverage, except the personal worksheet need not be returned for sales of employer group long term care insurance to employees and their spouses.

(4)The sale or dissemination outside the company or agency by the issuer or agent of information obtained through the personal worksheet in Appendix B is prohibited.

D. The issuer shall use the suitability standards it has developed pursuant to this Section in determining whether issuing long term care insurance coverage to an applicant is appropriate.

E. Agents shall use the suitability standards developed by the issuer in marketing long term care insurance.

F. At the same time as the personal worksheet is provided to the applicant, the disclosure form entitled "Things You Should Know Before You Buy Long Term Care Insurance" shall be provided. The form shall be in the format contained in Appendix C, in not less than twelve (12) point type.

G. If the issuer determines that the applicant does not meet its financial suitability standards, or if the applicant has declined to provide the information, the issuer may reject the application. In the alternative, the issuer shall send the applicant a letter similar to Appendix D. However, if the applicant has declined to provide financial information, the issuer may use some other method to verify the applicant's intent. Either the applicant's returned letter or a record of the alternative method of verification shall be made part of the applicant's file.

H. The issuer shall report annually to the Director the total number of applications received from residents of this state, the number of those who declined to provide information on the personal worksheet, the number of applicants who did not meet the suitability standards, and the number of those who chose to confirm after receiving a suitability letter.

### Section 25. Prohibition Against Preexisting Conditions and Probationary Periods in Replacement Policies or Certificates

If a long term care insurance policy or certificate replaces another long term care policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions and probationary periods in the new long term care policy for similar benefits to the extent that similar exclusions have been satisfied under the original policy.

### Section 26. Availability of New Services or Providers

A. An insurer shall notify policyholders of the availability of a new long term policy series that provides coverage for new long term care services or providers material in nature and not previously available through the insurer to the general public. The notice shall be provided within twelve (12) months of the date that the new policy series is made available for sale in this state.

B. Notwithstanding Subsection A above, notification is not required for any policy issued prior to the effective date of this Regulation or to any policyholder or certificate holder who is currently eligible for benefits, within an elimination period or on a claim, or who previously had been in claim status, or who would not be eligible to apply for coverage due to issue age limitations under the new policy. The insurer may require

that policyholders meet all eligibility requirements, including underwriting and payment of the required premium to add such new services or providers.

C. The insurer shall make the new coverage available in one of the following ways:

(1) By adding a rider to the existing policy and charging a separate premium for the new rider based on the insured's attained age;

(2) By exchanging the existing policy or certificate for one with an issue age based on the present age of the insured and recognizing past insured status by granting premium credits toward the premiums for the new policy or certificate. The premium credits shall be based on premiums paid or reserves held for the prior policy or certificate;

(3) By exchanging the existing policy or certificate for a new policy or certificate in which consideration for past insured status shall be recognized by setting the premium for the new policy or certificate at the issue age of the policy or certificate being exchanged. The cost for the new policy or certificate may recognize the difference in reserves between the new policy or certificate and the original policy or certificate; or

(4) By an alternative program developed by the insurer that meets the intent of this Section if the program is filed with and approved by the Director.

D. An insurer is not required to notify policyholders of a new proprietary policy series created and filed for use in a limited distribution channel. For purposes of this Subsection, "limited distribution channel" means through a discrete entity, such as a financial institution or brokerage, for which specialized products are available that are not available for sale to the general public. Policyholders that purchased such a new proprietary policy shall be notified when a new long term care policy series that provides coverage for new long term care services or providers material in nature is made available to that limited distribution channel.

E. Policies issued pursuant to this Section shall be considered exchanges and not replacements. These exchanges shall not be subject to Sections 14 and 24, and the reporting requirements of Section 15A through Section 15E of this Regulation.

F. Where the policy is offered through an employer, labor organization, professional, trade or occupational association, the required notification in Subsection A above shall be made to the offering entity. However, if the policy is issued to a group as defined in Section 4E(4) of this Regulation, the notification shall be made to each certificate holder.

G. Nothing in this Section shall prohibit an insurer from offering any policy, rider, certificate or coverage change to any policyholder or certificate holder. However, upon request any policyholder may apply for currently available coverage that includes the new services or providers. The insurer may require that policyholders meet all eligibility requirements, including underwriting and payment of the required premium to add such new services or providers.

H. This Section does not apply to life insurance policies or riders containing accelerated long term care benefits.

I. This Section shall become effective on January 1, 2010.

#### Section 27. Right to Reduce Coverage and Lower Premiums

A.(1) Every long term care insurance policy and certificate shall include a provision that allows the policyholder or certificate holder to reduce coverage and lower the policy or certificate premium in at least one of the following ways:

(a) Reducing the maximum benefit; or

(b) Reducing the daily, weekly or monthly benefit amount.

(2) The insurer may also offer other reduction options that are consistent with the policy or certificate design or the carrier's administrative processes.

B. The provision required in Section 27(A)(1) of this Regulation shall include a description of the ways in which coverage may be reduced and the process for requesting and implementing a reduction in coverage.

C. The age to determine the premium for the reduced coverage shall be based on the age used to determine the premiums for the coverage currently in force.

D. The insurer may limit any reduction in coverage to plans or options available for that policy form and to those for which benefits will be available after consideration of claims paid or payable.

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E. If a policy or certificate is about to lapse, the insurer shall provide a written reminder to the policyholder or certificate holder of his or her right to reduce coverage and premiums in the notice required by Section 7A(3) of this Regulation.

F. This Section does not apply to life insurance policies or riders containing accelerated long term care benefits.

G. The requirements of this Section shall apply to any long term care policy issued in this state on or after January 1, 2011.

### Section 28. Nonforfeiture Benefit Requirement

A. This Section does not apply to life insurance policies or riders containing accelerated long term care benefits.

B. To comply with the requirement to offer a nonforfeiture benefit pursuant to the provisions of S.C. Code Section 38-72-67:

(1) A policy or certificate offered with nonforfeiture benefits shall have coverage elements, eligibility, benefit triggers and benefit length that are the same as coverage to be issued without nonforfeiture benefits. The nonforfeiture benefit included in the offer shall be the benefit described in Subsection E; and

(2) The offer shall be in writing if the nonforfeiture benefit is not otherwise described in the Outline of Coverage or other materials given to the prospective policyholder.

C. If the offer required to be made under S.C. Code Section 38-72-67 is rejected, the insurer shall provide the contingent benefit upon lapse described in this Section. Even if this offer is accepted for a policy with a fixed or limited premium payment period, the contingent benefit on lapse in Subsection D(4) of this Regulation shall still apply.

D.(1) After rejection of the offer required under S.C. Code Section 38-72-67 for individual and group policies without nonforfeiture benefits issued after the effective date of this Section, the insurer shall provide a contingent benefit upon lapse.

(2) In the event a group policyholder elects to make the nonforfeiture benefit an option to the certificate holder, a certificate shall provide either the nonforfeiture benefit or the contingent benefit upon lapse.

(3) A contingent benefit on lapse shall be triggered every time an insurer increases the premium rates to a level which results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth below based on the insured's issue age, and the policy or certificate lapses within 120 days of the due date of the premium so increased. Unless otherwise required, policyholders shall be notified at least thirty (30) days prior to the due date of the premium reflecting the rate increase.

#### Triggers for a Substantial Premium Increase

Issue Age	Percent Increase Over Initial Premium
29 and under	200%
30-34	190%
35-39	170%
40-44	150%
45-49	130%
50-54	110%
55-59	90%
60	70%
61	66%
62	62%
63	58%
64	54%
65	50%
66	48%
67	46%
68	44%

69	42%
70	40%
71	38%
72	36%
73	34%
74	32%
75	30%
76	28%
77	26%
78	24%
79	22%
80	20%
81	19%
82	18%
83	17%
84	16%
85	15%
86	14%
87	13%
88	12%
89	11%
90 and over	10%

(4) A contingent benefit on lapse shall also be triggered for policies with a fixed or limited premium paying period every time an insurer increases the premium rates to a level that results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured’s initial annual premium set forth below based on the insured’s issue age, the policy or certificate lapses within 120 days of the due date of the premium so increased, and the ratio in Paragraph (6)(b) is forty percent (40%) or more. Unless otherwise required, policyholders shall be notified at least thirty (30) days prior to the due date of the premium reflecting the rate increase.

Triggers for a Substantial Premium Increase

Issue Age	Percent Increase Over Initial Premium
Under 65	50%
65-80	30%
Over 80	10%

This provision shall be in addition to the contingent benefit provided by Paragraph (3) above and where both are triggered, the benefit provided shall be at the option of the insured.

(5) On or before the effective date of a substantial premium increase as defined in Subsection D (3) above, the insurer shall:

(a) Offer to reduce policy benefits provided by the current coverage without the requirement of additional underwriting so that required premium payments are not increased;

(b) Offer to convert the coverage to a paid-up status with a shortened benefit period in accordance with the terms of Subsection E. This option may be elected at any time during the 120-day period referenced in Subsection D(3); and

(c) Notify the policyholder or certificate holder that a default or lapse at any time during the 120-day period referenced in Subsection D(3) shall be deemed to be the election of the offer to convert in Subparagraph (b) above unless the automatic option in Subsection (6)(c) applies.

(6) On or before the effective date of a substantial premium increase as defined in Subsection D(3) above, the insurer shall:

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(a) Offer to reduce policy benefits provided by the current coverage without the requirement of additional underwriting so that required premium payments are not increased;

(b) Offer to convert the coverage to a paid-up status where the amount payable for each benefit is ninety percent (90%) of the amount payable in effect immediately prior to lapse times the ratio of the number of completed months of paid premiums divided by the number of months in the premium paying period. This option may be elected at any time during the 120-day period referenced in Subsection D(4); and

(c) Notify the policyholder or certificate holder that a default or lapse at any time during the 120-day period referenced in Subsection D(4) shall be deemed to be the election of the offer to convert in Subsection 28 (D) 6 (b) above if the ratio is forty percent (40%) or more.

E. Benefits continued as nonforfeiture benefits, including contingent benefits upon lapse in accordance with Subsection D(3), but not Subsection D(4), are described in this Subsection:

(1) For purposes of this Subsection, attained age rating is defined as a schedule of premiums starting from the issue date which increases age at least one percent per year prior to age fifty (50), and at least three percent (3%) per year beyond age fifty (50).

(2) For purposes of this Subsection, the nonforfeiture benefit shall be of a shortened benefit period providing paid-up long term care insurance coverage after lapse. The same benefits (amounts and frequency in effect at the time of lapse but not increased thereafter) will be payable for a qualifying claim, but the lifetime maximum dollars or days of benefits shall be determined as specified in Paragraph (3).

(3) The standard nonforfeiture credit will be equal to 100% of the sum of all premiums paid, including the premiums paid prior to any changes in benefits. The insurer may offer additional shortened benefit period options, as long as the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration. However, the minimum nonforfeiture credit shall not be less than thirty (30) times the daily nursing home benefit at the time of lapse. In either event, the calculation of the nonforfeiture credit is subject to the limitation of Subsection F.

(4)(a) The nonforfeiture benefit shall begin not later than the end of the third year following the policy or certificate issue date. The contingent benefit upon lapse shall be effective during the first three (3) years as well as thereafter.

(b) Notwithstanding Subparagraph (a), for a policy or certificate with attained age rating, the nonforfeiture benefit shall begin on the earlier of:

(i) The end of the tenth year following the policy or certificate issue date; or

(ii) The end of the second year following the date the policy or certificate is no longer subject to attained age rating.

(5) Nonforfeiture credits may be used for all care and services qualifying for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate.

F All benefits paid by the insurer while the policy or certificate is in premium paying status and in the paid up status will not exceed the maximum benefits which would be payable if the policy or certificate had remained in premium paying status.

G. There shall be no difference in the minimum nonforfeiture benefits as required under this Section for group and individual policies.

H. The requirements set forth in this Section shall become effective twelve (12) months after adoption of this provision and shall apply as follows:

(1) Except as provided in Paragraphs (2) and (3) below, the provisions of this Section apply to any long term care policy issued in this state on or after the effective date of this amended regulation.

(2) For certificates issued on or after the effective date of this Section, under a group long term care insurance policy as defined in Section 4E(1) of this Regulation, which policy was in force at the time this amended regulation became effective, the provisions of this Section shall not apply.

(3) The last sentence in Subsection C and Subsections D(4) and D(6) shall apply to any long term care insurance policy or certificate issued in this state after July 1, 2010, except new certificates on a group policy as defined in Section 4E(1) of this Regulation after January 1, 2011.

I. Premiums charged for a policy or certificate containing nonforfeiture benefits or a contingent benefit on lapse shall be subject to the loss ratio requirements of Section 19 or Section 20, whichever is applicable, treating the policy as a whole.

J. To determine whether contingent nonforfeiture upon lapse provisions are triggered under Subsection D(3) or D(4), a replacing insurer that purchased or otherwise assumed a block or blocks of long term care insurance policies from another insurer shall calculate the percentage increase based on the initial annual premium paid by the insured when the policy was first purchased from the original insurer.

K. A nonforfeiture benefit for qualified long term care insurance contracts that are level premium contracts shall be offered that meets the following requirements:

- (1) The nonforfeiture provision shall be appropriately captioned;
- (2) The nonforfeiture provision shall provide a benefit available in the event of a default in the payment of any premiums and shall state that the amount of the benefit may be adjusted subsequent to being initially granted only as necessary to reflect changes in claims, persistency and interest as reflected in changes in rates for premium paying contracts approved by the Director for the same contract form; and
- (3) The nonforfeiture provision shall provide at least one of the following:
  - (a) Reduced paid-up insurance;
  - (b) Extended term insurance;
  - (c) Shortened benefit period; or
  - (d) Other similar offerings approved by the Director.

Section 29. Standards for Benefit Triggers

A. A long term care insurance policy shall condition the payment of benefits on a determination of the insured's ability to perform activities of daily living and on cognitive impairment. Eligibility for the payment of benefits shall not be more restrictive than requiring either a deficiency in the ability to perform not more than three (3) of the activities of daily living or the presence of cognitive impairment.

B.(1) Activities of daily living shall include at least the following as defined in Section 5 and in the policy:

- (a) Bathing;
- (b) Continence;
- (c) Dressing;
- (d) Eating;
- (e) Toileting; and
- (f) Transferring;

(2) Insurers may use activities of daily living to trigger covered benefits in addition to those contained in Paragraph (1) as long as they are defined in the policy.

C. An insurer may use additional provisions for the determination of when benefits are payable under a policy or certificate; however the provisions shall not restrict, and are not in lieu of, the requirements contained in Subsections A and B.

D. For purposes of this Section the determination of a deficiency shall not be more restrictive than:

- (1) Requiring the hands-on assistance of another person to perform the prescribed activities of daily living; or
- (2) If the deficiency is due to the presence of a cognitive impairment, supervision or verbal cueing by another person is needed in order to protect the insured or others.

E. Assessments of activities of daily living and cognitive impairment shall be performed by licensed or certified professionals, such as physicians, nurses or social workers.

F. Long-term care insurance policies shall include a clear description of the process for appealing and resolving benefit determinations.

G. The requirements set forth in this Section shall be effective 12 months after the effective date of this Regulation, and shall apply as follows:

- (1) Except as provided in Paragraph (2), the provisions of this Section apply to a long term care policy issued in this state on or after the effective date of the amended regulation.
- (2) For certificates issued on or after the effective date of this Section, under a group long term care insurance policy as defined in Section 4E(1) of this Regulation that was in force at the time this amended regulation became effective, the provisions of this Section shall not apply.

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### Section 30. Additional Standards for Benefit Triggers for Qualified Long Term Care Insurance Contracts

A. For purposes of this Section the following definitions apply:

(1) "Qualified long term care services" means services that meet the requirements of Section 7702(c)(1) of the Internal Revenue Code of 1986, as amended, as follows: necessary diagnostic, preventive, therapeutic, curative, treatment, mitigation and rehabilitative services, and maintenance or personal care services which are required by a chronically ill individual, and are provided pursuant to a plan of care prescribed by a licensed health care practitioner.

(2)(a) "Chronically ill individual" has the meaning prescribed for this term by Section 7702B(c)(2) of the Internal Revenue Code of 1986, as amended. Under this provision, a chronically ill individual means any individual who has been certified by a licensed health care practitioner as:

(i) Being unable to perform (without substantial assistance from another individual) at least two (2) activities of daily living for a period of at least ninety (90) days due to a loss of functional capacity; or

(ii) Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment.

(b) The term "chronically ill individual" shall not include an individual otherwise meeting these requirements unless within the preceding twelve-month period a licensed health care practitioner has certified that the individual meets these requirements.

(3) "Licensed health care practitioner" means a physician, as defined in Section 1861(r)(1) of the Social Security Act, a registered professional nurse, licensed social worker or other individual who meets requirements prescribed by the Secretary of the Treasury.

(4) "Maintenance or personal care services" means any care the primary purpose of which is the provision of needed assistance with any of the disabilities as a result of which the individual is a chronically ill individual (including the protection from threats to health and safety due to severe cognitive impairment).

B. A qualified long term care insurance contract shall pay only for qualified long term care services received by a chronically ill individual provided pursuant to a plan of care prescribed by a licensed health care practitioner.

C. A qualified long term care insurance contract shall condition the payment of benefits on a determination of the insured's inability to perform activities of daily living for an expected period of at least ninety (90) days due to a loss of functional capacity or to severe cognitive impairment.

D. Certifications regarding activities of daily living and cognitive impairment required pursuant to Subsection C shall be performed by the following licensed or certified professionals: physicians, registered professional nurses, licensed social workers, or other individuals who meet requirements prescribed by the Secretary of the Treasury.

E. Certifications required pursuant to Subsection C may be performed by a licensed health care professional at the direction of the carrier as is reasonably necessary with respect to a specific claim, except that when a licensed health care practitioner has certified that an insured is unable to perform activities of daily living for an expected period of at least ninety (90) days due to a loss of functional capacity and the insured is in claim status, the certification may not be rescinded and additional certifications may not be performed until after the expiration of the ninety-day (90) period.

F. Qualified long term care insurance contracts shall include a clear description of the process for appealing and resolving disputes with respect to benefit determinations.

### Section 31. Standard Format Outline of Coverage

This Section of the regulation implements, interprets and makes specific, the provisions of S.C. Code Section 38-72-60 in prescribing a standard format and the content of an outline of coverage.

A. The outline of coverage shall be a free-standing document, using no smaller than ten-point type.

B. The outline of coverage shall contain no material of an advertising nature.

C. Text that is capitalized or underscored in the standard format outline of coverage may be emphasized by other means that provide prominence equivalent to the capitalization or underscoring.

D. Use of the text and sequence of text of the standard format outline of coverage is mandatory, unless otherwise specifically indicated.

E. Format for outline of coverage:

COMPANY NAME

ADDRESS - CITY & STATE

TELEPHONE NUMBER

LONG-TERM CARE INSURANCE

OUTLINE OF COVERAGE

[Policy Number or Group Master Policy and Certificate Number]

[Except for policies or certificates which are guaranteed issue, the following caution statement, or language substantially similar, must appear as follows in the outline of coverage.]

Caution: The issuance of this long term care insurance [policy] [certificate] is based upon your responses to the questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address]

1. This policy is [an individual policy of insurance] ([a group policy] which was issued in the [indicate jurisdiction in which group policy was issued]).

2. PURPOSE OF OUTLINE OF COVERAGE. This outline of coverage provides a very brief description of the important features of the policy. You should compare this outline of coverage to outlines of coverage for other policies available to you. This is not an insurance contract, but only a summary of coverage. Only the individual or group policy contains governing contractual provisions. This means that the policy or group policy sets forth in detail the rights and obligations of both you and the insurance company. Therefore, if you purchase this coverage, or any other coverage, it is important that you READ YOUR POLICY (OR CERTIFICATE) CAREFULLY!

3. FEDERAL TAX CONSEQUENCES.

This [POLICY] [CERTIFICATE] is intended to be a federally tax-qualified long term care insurance contract under Section 7702B (b) of the Internal Revenue Code of 1986, as amended.

OR

Federal Tax Implications of this [POLICY] [CERTIFICATE]. This [POLICY] [CERTIFICATE] is not intended to be a federally tax-qualified long term care insurance contract under Section 7702B (b) of the Internal Revenue Code of 1986 as amended. Benefits received under the [POLICY] [CERTIFICATE] may be taxable as income.

4. TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE CONTINUED IN FORCE OR DISCONTINUED.

(a)[For long term care health insurance policies or certificates describe one of the following permissible policy renewability provisions:]

(1) Policies and certificates that are guaranteed renewable shall contain the following statement: RENEWABILITY: THIS POLICY [CERTIFICATE] IS GUARANTEED RENEWABLE. This means you have the right, subject to the terms of your policy, [certificate] to continue this policy as long as you pay your premiums on time. [Company Name] cannot change any of the terms of your policy on its own, except that, in the future, IT MAY INCREASE THE PREMIUM YOU PAY.

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(2) Policies and certificates that are noncancellable shall contain the following statement: **RENEWABILITY: THIS POLICY [CERTIFICATE] IS NONCANCELLABLE.** This means that you have the right, subject to the terms of your policy, to continue this policy as long as you pay your premiums on time. [Company Name] cannot change any of the terms of your policy on its own and cannot change the premium you currently pay. However, if your policy contains an inflation protection feature where you choose to increase your benefits, [Company Name] may increase your premium at that time for those additional benefits.

(b) [For group coverage, specifically describe continuation/conversion provisions applicable to the certificate and group policy;]

(c) [Describe waiver of premium provisions or state that there are not such provisions.]

### 5. TERMS UNDER WHICH THE COMPANY MAY CHANGE PREMIUMS.

[In bold type larger than the maximum type required to be used for the other provisions of the outline of coverage, state whether or not the company has a right to change the premium, and if a right exists, describe clearly and concisely each circumstance under which the premium may change.]

### 6. TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE RETURNED AND PREMIUM REFUNDED.

(a) [Provide a brief description of the right to return—"free look" provision of the policy.]

(b) [Include a statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium upon the death of an insured or surrender of the policy or certificate. If the policy contains such provisions, include a description of them.]

7. **THIS IS NOT MEDICARE SUPPLEMENT COVERAGE.** If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the insurance company.

(a) [For agents] Neither [insert company name] nor its agents represent Medicare, the federal government or any state government.

(b) [For direct response] [insert company name] is not representing Medicare, the federal government or any state government.

8. **LONG-TERM CARE COVERAGE.** Policies of this category are designed to provide coverage for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital, such as in a nursing home, in the community or in the home. This policy provides coverage in the form of a fixed dollar indemnity benefit for covered long term care expenses, subject to policy [limitations] [waiting periods] and [coinsurance] requirements. [Modify this paragraph if the policy is not an indemnity policy.]

### 9. BENEFITS PROVIDED BY THIS POLICY.

(a) [Covered services, related deductibles, waiting periods, elimination periods and benefit maximums.]

(b) [Institutional benefits, by skill level.]

(c) [Non-institutional benefits, by skill level.]

(d) Eligibility for Payment of Benefits

[Activities of daily living and cognitive impairment shall be used to measure an insured's need for long term care and must be defined and described as part of the outline of coverage.]

[Any additional benefit triggers must also be explained. If these triggers differ for different benefits, explanation of the triggers should accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too must be specified.]

10. LIMITATIONS AND EXCLUSIONS.

[Describe:

- (a) Preexisting conditions;
- (b) Non-eligible facilities and provider;
- (c) Non-eligible levels of care (e.g., unlicensed providers, care or treatment provided by a family member, etc.);
- (d) Exclusions and exceptions;
- (e) Limitations.]

[This Section should provide a brief specific description of any policy provisions which limit, exclude, restrict, reduce, delay, or in any other manner operate to qualify payment of the benefits described in Number 6 above.]

**THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG-TERM CARE NEEDS.**

11. RELATIONSHIP OF COST OF CARE AND BENEFITS. Because the costs of long term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. [As applicable, indicate the following:

- (a) That the benefit level will not increase over time;
- (b) Any automatic benefit adjustment provisions;
- (c) Whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not by a specified amount or percentage;
- (d) If there is such a guarantee, include whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations;
- (e) And finally, describe whether there will be any additional premium charge imposed, and how that is to be calculated.]

12. ALZHEIMER'S DISEASE AND OTHER ORGANIC BRAIN DISORDERS.

[State that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's disease or related degenerative and dementing illnesses. Specifically describe each benefit screen or other policy provision which provides preconditions to the availability of policy benefits for such an insured.]

13. PREMIUM.

- (a) [State the total annual premium for the policy;
- (b) If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium which corresponds to each benefit option.]

14. ADDITIONAL FEATURES.

- (a) [Indicate if medical underwriting is used;
- (b) Describe other important features.]

15. CONTACT THE STATE SENIOR HEALTH INSURANCE ASSISTANCE PROGRAM IF YOU HAVE GENERAL QUESTIONS REGARDING LONG-TERM CARE INSURANCE. CONTACT THE INSURANCE COMPANY IF YOU HAVE SPECIFIC QUESTIONS REGARDING YOUR LONG-TERM CARE INSURANCE POLICY OR CERTIFICATE.

Section 32. Requirement to Deliver Shopper's Guide

A. A long term care insurance shopper's guide in the format developed by the National Association of Insurance Commissioners, or a guide developed or approved by the Director, shall be provided to all prospective applicants of a long term care insurance policy or certificate.

(1) In the case of agent solicitations, an agent must deliver the shopper's guide prior to the presentation of an application or enrollment form.

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(2) In the case of direct response solicitations, the shopper's guide must be presented in conjunction with any application or enrollment form.

B. Life insurance policies or riders containing accelerated long term care benefits are not required to furnish the above-referenced guide, but shall furnish the policy summary required under S.C. Code Section 38-72-60.

### Section 33. Penalties

In addition to any other penalties provided by the laws of this state any insurer and any agent found to have violated any requirement of this state relating to the regulation of long term care insurance or the marketing of such insurance shall be subject to a fine of up to three (3) times the amount of any commissions paid for each policy involved in the violation or up to \$10,000, whichever is greater.

### Section 34. Effective Date

This regulation shall become effective upon publication in the *State Register*.

APPENDIX A

RESCISSION REPORTING FORM FOR  
 LONG-TERM CARE POLICIES  
 FOR THE STATE OF \_\_\_\_\_  
 FOR THE REPORTING YEAR 20[ ]

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Due: March 1 annually

Instructions:

The purpose of this form is to report all rescissions of long term care insurance policies or certificates. Those rescissions voluntarily effectuated by an insured are not required to be included in this report. Please furnish one form per rescission.

Policy Form #	Policy and Certificate #	Name of Insured	Date of Policy Issuance	Date/s Claim/s Submitted	Date of Rescission

Detailed reason for rescission: \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Name and Title (please type)

\_\_\_\_\_  
 Date

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### APPENDIX B

#### Long-term Care Insurance Personal Worksheet

People buy long term care insurance for many reasons. Some don't want to use their own assets to pay for long term care. Some buy insurance to make sure they can choose the type of care they get. Others don't want their family to have to pay for care or don't want to go on Medicaid. But long term care insurance may be expensive, and may not be right for everyone.

By state law, the insurance company must fill out part of the information on this worksheet and ask you to fill out the rest to help you and the company decide if you should buy this policy.

#### Premium Information

Policy Form Numbers \_\_\_\_\_

The premium for the coverage you are considering will be [\$\_\_\_\_\_ per month, or \$\_\_\_\_\_ per year,] [a one-time single premium of \$\_\_\_\_\_.]

Type of Policy (noncancellable/guaranteed renewable): \_\_\_\_\_

The Company's Right to Increase Premiums: \_\_\_\_\_

[The company cannot raise your rates on this policy.] [The company has a right to increase premiums on this policy form in the future, provided it raises rates for all policies in the same class in this state.] [Insurers shall use appropriate bracketed statement. Rate guarantees shall not be shown on this form.]

#### Rate Increase History

The company has sold long term care insurance since [year] and has sold this policy since [year]. [The company has never raised its rates for any long term care policy it has sold in this state or any other state.] [The company has not raised its rates for this policy form or similar policy forms in this state or any other state in the last 10 years.] [The company has raised its premium rates on this policy form or similar policy forms in the last 10 years. Following is a summary of the rate increases.]

[Note: A company may use the first bracketed sentence above only if it has never increased rates under any prior policy forms in this state or any other state. The issuer shall list each premium increase it has instituted on this or similar policy forms in this state or any other state during the last 10 years. The list shall provide the policy form, the calendar years the form was available for sale, and the calendar year and the amount (percentage) of each increase. The insurer shall provide minimum and maximum percentages if the rate increase is variable by rating characteristics. The insurer may provide, in a fair manner, additional explanatory information as appropriate.]

#### Questions Related to Your Income

How will you pay each year's premium?

From my Income     From my Savings/Investments     My Family will Pay

Have you considered whether you could afford to keep this policy if the premiums went up, for example, by 20%?

[Note: The issuer is not required to use the bracketed sentence if the policy is fully paid up or is a noncancellable policy.]

What is your annual income? (check one)  Under \$10,000  \$[10-20,000]  \$[20-30,000]  \$[30-50,000]  
 Over \$50,000

[Note: The issuer may choose the numbers to put in the brackets to fit its suitability standards.]

How do you expect your income to change over the next 10 years? (check one)  
 No change  Increase  Decrease

*If you will be paying premiums with money received only from your own income, a rule of thumb is that you may not be able to afford this policy if the premiums will be more than 7% of your income.*

Will you buy inflation protection? (check one)  Yes  No  
If not, have you considered how you will pay for the difference between future costs and your daily benefit amount?  
 From my Income  From my Savings/Investments  My Family will Pay

*The national average annual cost of care in [insert year] was [insert \$ amount], but this figure varies across the country. In ten years the national average annual cost would be about [insert \$ amount] if costs increase 5% annually.*

[Note: The projected cost can be based on federal estimates in a current year. In the above statement, the second figure equals 163% of the first figure.]

What elimination period are you considering? Number of days \_\_\_\_\_ Approximate cost \$ \_\_\_\_\_ for that period of care.

How are you planning to pay for your care during the elimination period? (check one)  
 From my Income  From my Savings/Investments  My Family will Pay

Questions Related to Your Savings and Investments

Not counting your home, about how much are all of your assets (your savings and investments) worth? (check one)  
 Under \$20,000  \$20,000-\$30,000  \$30,000-\$50,000  Over \$50,000

How do you expect your assets to change over the next ten years? (check one)  
 Stay about the same  Increase  Decrease

*If you are buying this policy to protect your assets and your assets are less than \$30,000, you may wish to consider other options for financing your long term care.*

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Disclosure Statement

<p>The answers to the questions above describe my financial situation. Or I choose not to complete this information. (Check one.)</p>
<p>I acknowledge that the carrier and/or its agent (below) has reviewed this form with me including the premium, premium rate increase history and potential for premium increases in the future. [For direct mail situations, use the following: I acknowledge that I have reviewed this form including the premium, premium rate increase history and potential for premium increases in the future.] I understand the above disclosures. I understand that the rates for this policy may increase in the future. (This box must be checked).</p>

Signed: \_\_\_\_\_  
(Applicant) (Date)

[I explained to the applicant the importance of completing this information.

Signed: \_\_\_\_\_  
(Agent) (Date)

Agent's Printed  
Name: \_\_\_\_\_]

[In order for us to process your application, please return this signed statement to [name of company], along with your application.]

[My agent has advised me that this policy does not seem to be suitable for me. However, I still want the company to consider my application.

Signed: \_\_\_\_\_  
(Applicant) (Date)

*The company may contact you to verify your answers.*

APPENDIX C

Things You Should Know Before You Buy  
Long Term Care Insurance

Long Term Care Insurance      A long term care insurance policy may pay most of the costs for your care in a nursing home. Many policies also pay for care at home or other community settings. Since policies can vary in coverage, you should read this policy and make sure you understand what it covers before you buy it.

[You should not buy this insurance policy unless you can afford to pay the premiums every year.] [Remember that the company can increase premiums in the future.]

[Note:For single premium policies, delete this bullet; for noncancellable policies, delete the second sentence only.]

The personal worksheet includes questions designed to help you and the company determine whether this policy is suitable for your needs.

Medicare      Medicare does not pay for most long term care.

Medicaid      Medicaid will generally pay for long term care if you have very little income and few assets. You probably should not buy this policy if you are now eligible for Medicaid.

Many people become eligible for Medicaid after they have used up their own financial resources by paying for long term care services.

When Medicaid pays your spouse’s nursing home bills, you are allowed to keep your house and furniture, a living allowance, and some of your joint assets.

Your choice of long term care services may be limited if you are receiving Medicaid. To learn more about Medicaid, contact your local or state Medicaid agency.

Shopper’s Guide      Make sure the insurance company or agent gives you a copy of a book called the National Association of Insurance Commissioners’ “Shopper’s Guide to Long Term Care Insurance.” Read it carefully. If you have decided to apply for long term care insurance, you have the right to return the policy within 30 days and get back any premium you have paid if you are dissatisfied for any reason or choose not to purchase the policy.

Counseling      Free counseling and additional information about long term care insurance are available through your state’s insurance counseling program. Contact your state insurance department or department on aging for more information about the senior health insurance counseling program in your state.

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Facilities            Some long term care insurance contracts provide for benefit payments in certain facilities only if they are licensed or certified, such as in assisted living centers. However, not all states regulate these facilities in the same way. Also, many people move to a different state from where they purchased their long term care insurance policy. Read the policy carefully to determine what types of facilities qualify for benefit payments, and to determine that payment for a covered service will be made if you move to a state that has a different licensing scheme for facilities than the one in which you purchased the policy.

APPENDIX D

Long Term Care Insurance Suitability Letter

Dear [Applicant]:

Your recent application for long term care insurance included a “personal worksheet,” which asked questions about your finances and your reasons for buying long term care insurance. For your protection, state law requires us to consider this information when we review your application, to avoid selling a policy to those who may not need coverage.

[Your answers indicate that long term care insurance may not meet your financial needs. We suggest that you review the information provided along with your application, including the booklet “Shopper’s Guide to Long Term Care Insurance” and the page titled “Things You Should Know Before Buying Long Term Care Insurance.” Your state insurance department also has information about long term care insurance and may be able to refer you to a counselor free of charge who can help you decide whether to buy this policy.]

[You chose not to provide any financial information for us to review.]

[Note: Choose the paragraph that applies.]

We have suspended our final review of your application. If, after careful consideration, you still believe this policy is what you want, check the appropriate box below and return this letter to us within the next 60 days. We will then continue reviewing your application and issue a policy if you meet our medical standards.

If we do not hear from you within the next 60 days, we will close your file and not issue you a policy. You should understand that you will not have any coverage until we hear back from you, approve your application and issue you a policy.

*Please check one box and return in the enclosed envelope.*

Yes, [although my worksheet indicates that long term care insurance may not be a suitable purchase,] I wish to purchase this coverage. Please resume review of my application.

[Note: Delete the phrase in brackets if the applicant did not answer the questions about income.]

No. I have decided not to buy a policy at this time.

\_\_\_\_\_  
 APPLICANT’S SIGNATURE

\_\_\_\_\_  
 DATE

*Please return to [issuer] at [address] by [date].*

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APPENDIX E

Claims Denial Reporting Form  
Long Term Care Insurance

For the State of \_\_\_\_\_  
For the Reporting Year of \_\_\_\_\_

Company Name: \_\_\_\_\_ Due: June 30 annually  
Company Address: \_\_\_\_\_

Company NAIC Number: \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Line of Business: Individual      Group

Instructions

The purpose of this form is to report all long term care claim denials under in force long term care insurance policies. “Denied” means a claim that is not paid for any reason other than for claims not paid for failure to meet the waiting period or because of an applicable preexisting condition.

		State Data	Nationwide Data <sup>1</sup>
1	Total Number of Long Term Care Claims Reported		
2	Total Number of Long Term Care Claims Denied/Not Paid		
3	Number of Claims Not Paid due to Preexisting Condition Exclusion		
4	Number of Claims Not Paid due to Waiting (Elimination) Period Not Met		
5	Net Number of Long Term Care Claims Denied for Reporting Purposes (Line 2 Minus Line 3 Minus Line 4)		
6	Percentage of Long Term Care Claims Denied of Those Reported (Line 5 Divided By Line 1)		
7	Number of Long Term Care Claim Denied due to:		
8	Long Term Care Services Not Covered under the Policy <sup>2</sup>		
9	Provider/Facility Not Qualified under the Policy <sup>3</sup>		
10	Benefit Eligibility Criteria Not Met <sup>4</sup>		
11	Other		

1. The nationwide data may be viewed as a more representative and credible indicator where the data for claims reported and denied for your state are small in number.
2. Example—home health care claim filed under a nursing home only policy.
3. Example—a facility that does not meet the minimum level of care requirements or the licensing requirements as outlined in the policy.
4. Examples—a benefit trigger not met, certification by a licensed health care practitioner not provided, no plan of care.

APPENDIX F

Long Term Care Insurance  
Potential Rate Increase Disclosure Form

Instructions:

This form provides information to the applicant regarding premium rate schedules, rate schedule adjustments, potential rate revisions, and policyholder options in the event of a rate increase.

Insurers shall provide all of the following information to the applicant:

1. [Premium Rate] [Premium Rate Schedules]: [Premium rate] [Premium rate schedules] that [is][are] applicable to you and that will be in effect until a request is made and approved for an increase [is][are] [on the application][(\$\_\_\_\_\_)]

2. The [premium] [premium rate schedule] for this policy [will be shown on the schedule page of] [will be attached to] your policy.

3. Rate Schedule Adjustments:

The company will provide a description of when premium rate or rate schedule adjustments will be effective (e.g., next anniversary date, next billing date, etc.) (fill in the blank): \_\_\_\_\_.

4. Potential Rate Revisions:

This policy is Guaranteed Renewable. This means that the rates for this product may be increased in the future. Your rates can NOT be increased due to your increasing age or declining health, but your rates may go up based on the experience of all policyholders with a policy similar to yours.

If you receive a premium rate or premium rate schedule increase in the future, you will be notified of the new premium amount and you will be able to exercise at least one of the following options:

Pay the increased premium and continue your policy in force as is.

Reduce your policy benefits to a level such that your premiums will not increase. (Subject to state law minimum standards.)

Exercise your nonforfeiture option if purchased. (This option is available for purchase for an additional premium.)

Exercise your contingent nonforfeiture rights.\* (This option may be available if you do not purchase a separate nonforfeiture option.)

\*Contingent Nonforfeiture

If the premium rate for your policy goes up in the future and you didn't buy a nonforfeiture option, you

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may be eligible for contingent nonforfeiture. Here's how to tell if you are eligible:

You will keep some long term care insurance coverage, if:

Your premium after the increase exceeds your original premium by the percentage shown (or more) in the following table; and

You lapse (not pay more premiums) within 120 days of the increase.

The amount of coverage (i.e., new lifetime maximum benefit amount) you will keep will equal the total amount of premiums you've paid since your policy was first issued. If you have already received benefits under the policy, so that the remaining maximum benefit amount is less than the total amount of premiums you've paid, the amount of coverage will be that remaining amount.

Except for this reduced lifetime maximum benefit amount, all other policy benefits will remain at the levels attained at the time of the lapse and will not increase thereafter.

Should you choose this Contingent Nonforfeiture option, your policy, with this reduced maximum benefit amount, will be considered "paid-up" with no further premiums due.

Example:

You bought the policy at age 65 and paid the \$1,000 annual premium for 10 years, so you have paid a total of \$10,000 in premium.

In the eleventh year, you receive a rate increase of 50%, or \$500 for a new annual premium of \$1,500, and you decide to lapse the policy (not pay any more premiums).

Your "paid-up" policy benefits are \$10,000 (provided you have a least \$10,000 of benefits remaining under your policy.)

Contingent Nonforfeiture  
Cumulative Premium Increase over Initial Premium  
That qualifies for Contingent Nonforfeiture

(Percentage increase is cumulative from date of original issue. It does NOT represent a one-time increase.)

Issue Age	Percent Increase Over Initial Premium
29 and under	200%
30-34	190%
35-39	170%
40-44	150%
45-49	130%
50-54	110%
55-59	90%
60	70%
61	66%
62	62%
63	58%
64	54%
65	50%
66	48%

67	46%
68	44%
69	42%
70	40%
71	38%
72	36%
73	34%
74	32%
75	30%
76	28%
77	26%
78	24%
79	22%
80	20%
81	19%
82	18%
83	17%
84	16%
85	15%
86	14%
87	13%
88	12%
89	11%
90 and over	10%

[The following contingent nonforfeiture disclosure need only be included for those limited pay policies to which Sections 28D(4) and 28D(6) of this Regulation ].

In addition to the contingent nonforfeiture benefits described above, the following reduced “paid-up” contingent nonforfeiture benefit is an option in all policies that have a fixed or limited premium payment period, even if you selected a nonforfeiture benefit when you bought your policy. If both the reduced “paid-up” benefit AND the contingent benefit described above are triggered by the same rate increase, you can chose either of the two benefits.

You are eligible for the reduced “paid-up” contingent nonforfeiture benefit when all three conditions shown below are met:

1. The premium you are required to pay after the increase exceeds your original premium by the same percentage or more shown in the chart below;

Triggers for a Substantial Premium Increase

Issue Age	Percent Increase Over Initial Premium
Under 65	50%
65-80	30%
Over 80	10%

2. You stop paying your premiums within 120 days of when the premium increase took effect; AND

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3. The ratio of the number of months you already paid premiums is 40% or more than the number of months you originally agreed to pay.

If you exercise this option your coverage will be converted to reduced “paid-up” status. That means there will be no additional premiums required. Your benefits will change in the following ways:

a. The total lifetime amount of benefits your reduced paid up policy will provide can be determined by multiplying 90% of the lifetime benefit amount at the time the policy becomes paid up by the ratio of the number of months you already paid premiums to the number of months you agreed to pay them.

b. The daily benefit amounts you purchased will also be adjusted by the same ratio.

If you purchased lifetime benefits, only the daily benefit amounts you purchased will be adjusted by the applicable ratio.

Example:

You bought the policy at age 65 with an annual premium payable for 10 years.

In the sixth year, you receive a rate increase of 35% and you decide to stop paying premiums.

Because you have already paid 50% of your total premium payments and that is more than the 40% ratio, your “paid-up” policy benefits are .45 (.90 times .50) times the total benefit amount that was in effect when you stopped paying your premiums. If you purchased inflation protection, it will not continue to apply to the benefits in the reduced “paid-up” policy.

APPENDIX G

Long Term Care Insurance  
Replacement and Lapse Reporting Form

For the State of \_\_\_\_\_ For the Reporting Year of \_\_\_\_\_

Company Name: \_\_\_\_\_ Due: June 30 annually

Company Address: \_\_\_\_\_ Company NAIC Number: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone Number: (\_\_\_\_) \_\_\_\_\_

Instructions

The purpose of this form is to report on a statewide basis information regarding long term care insurance policy replacements and lapses. Specifically, every insurer shall maintain records for each agent on that agent's amount of long term care insurance replacement sales as a percent of the agent's total annual sales and the amount of lapses of long term care insurance policies sold by the agent as a percent of the agent's total annual sales. The tables below should be used to report the ten percent (10%) of the insurer's agents with the greatest percentages of replacements and lapses.

Listing of the 10% of Agents with the Greatest Percentage of Replacements

Agent's Name	Number of Policies Sold By This Agent	Number of Policies Replaced By This Agent	Number of Replacements As % of Number Sold By This Agent

Listing of the 10% of Agents with the Greatest Percentage of Lapses

Agent's Name	Number of Policies Sold By This Agent	Number of Policies Lapsed By This Agent	Number of Lapses As % of Number Sold By This Agent

Company Totals

Percentage of Replacement Policies Sold to Total Annual Sales \_\_\_\_%

Percentage of Replacement Policies Sold to Policies In Force (as of the end of the preceding calendar year) \_\_\_\_%

Percentage of Lapsed Policies to Total Annual Sales \_\_\_\_%

Percentage of Lapsed Policies to Policies In Force (as of the end of the preceding calendar year) \_\_\_\_%

**Fiscal Impact Statement:**

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

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### Statement of Rationale:

The Long Term Care Insurance Model Regulation was recently updated by the National Association of Insurance Commissioners (NAIC). The model regulation promotes the public interest by promoting the availability of long term care insurance coverage, protecting applicants for long term care insurance, as defined, from unfair or deceptive sales or enrollment practices, facilitating public understanding and comparison of long term care qualified partnership program insurance coverages and facilitating flexibility and innovation in the development of long term care insurance. The amendments to Regulation 69-44 bring the long term care regulation into compliance with State and Federal law and will provide uniformity of regulation with other states who have adopted the model regulation.

Document No. 4083  
**DEPARTMENT OF INSURANCE**  
CHAPTER 69

Statutory Authority: 1976 Code Sections 1-23-110 et seq., 38-3-110 and 38-57-10 et seq.

69-40.1 Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities

### Synopsis:

The South Carolina Department of Insurance proposes to add Regulation 69-40.1, Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities, to the South Carolina Code of Laws. The proposed regulation will be based upon the NAIC Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities and will provide consumer protections in the use of senior-specific designations by producers and insurers in the sales or marketing of life insurance and annuities.

Notice of drafting for the proposed regulation was published in the *State Register* on May 22, 2009.

### Instructions:

Add Regulation 69-40.1, Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities, as drafted below to the South Carolina Code of Regulations.

### Text:

69-40.1 Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities

#### Section 1. Purpose

The purpose of this regulation is to set forth standards to protect consumers from misleading and fraudulent marketing practices with respect to the use of senior-specific certifications and professional designations in the solicitation, sale or purchase of, or advice made in connection with, a life insurance or annuity product.

#### Section 2. Scope

This regulation shall apply to any solicitation, sale or purchase of, or advice made in connection with, a life insurance or annuity product by an insurance producer.

#### Section 3. Definition

For purposes of this regulation, "insurance producer" means a person required to be licensed under the laws of this State to sell, solicit or negotiate insurance, including annuities.

#### Section 4. Prohibited Uses of Senior-Specific Certifications and Professional Designations

A.(1) It is an unfair and deceptive act or practice in the business of insurance within the meaning of Chapter 57 of the 1976 Code of Laws of South Carolina, as amended, for an insurance producer to use a senior-specific certification or professional designation that indicates or implies in such a way as to mislead a purchaser or prospective purchaser that the insurance producer has special certification or training in advising or servicing seniors in connection with the solicitation, sale or purchase of a life insurance or annuity product or in the provision of advice as to the value of or the advisability of purchasing or selling a life insurance or annuity product, either directly or indirectly through publications or writings, or by issuing or promulgating analyses or reports related to a life insurance or annuity product.

(2) The prohibited use of senior-specific certifications or professional designations includes, but is not limited to, the following:

(a) Use of a certification or professional designation by an insurance producer who has not actually earned or is otherwise ineligible to use such certification or designation;

(b) Use of a nonexistent or self-conferred certification or professional designation;

(c) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training or experience that the insurance producer using the certification or designation does not have; and

(d) Use of a certification or professional designation that was obtained from a certifying or designating organization that:

(i) Is primarily engaged in the business of instruction in sales or marketing;

(ii) Does not have reasonable standards or procedures for assuring the competency of its certificants or designees;

(iii) Does not have reasonable standards or procedures for monitoring and disciplining its certificants or designees for improper or unethical conduct; or

(iv) Does not have reasonable continuing education requirements for its certificants or designees in order to maintain the certificate or designation.

B. There is a rebuttable presumption that a certifying or designating organization is not disqualified solely for purposes of subsection A(2)(d) when the certification or designation issued from the organization does not primarily apply to sales or marketing and when the organization or the certification or designation in question has been accredited by:

(1) The American National Standards Institute (ANSI);

(2) The National Commission for Certifying Agencies; or

(3) Any organization that is on the U.S. Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes."

C. In determining whether a combination of words or an acronym standing for a combination of words constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing seniors, factors to be considered shall include:

(1) Use of one or more words such as "senior," "retirement," "elder," or like words combined with one or more words such as "certified," "registered," "chartered," "advisor," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(2) The manner in which those words are combined.

D.(1) For purposes of this regulation, a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency is not a certification or professional designation, unless it is used in a manner that would confuse or mislead a reasonable consumer, when the job title:

(a) Indicates seniority or standing within the organization; or

(b) Specifies an individual's area of specialization within the organization.

(2) For purposes of this subsection, financial services regulatory agency includes, but is not limited to, an agency that regulates insurers, insurance producers, broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

#### Section 5. Effective Date

This regulation shall become effective upon final publication in the *State Register*.

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### **Fiscal Impact Statement:**

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

### **Statement of Rationale:**

The regulation is needed to set forth the standards to protect purchasers of life insurance and annuities from misleading and improper use of senior specific designations or titles in the marketing or sales of life insurance and annuities. It makes it an unfair and deceptive act or practice for an insurance producer to use a senior-specific certification or professional designation that indicates or implies in such a way as to mislead a purchaser or prospective purchaser that the insurance producer has special certification or training in advising or servicing seniors in connection with the solicitation, sale or purchase of a life insurance or annuity product. This regulation is based upon the NAIC Model Regulation on the Use of Senior-Specific designations in the sale of life insurance and annuities.

Document No. 4073

### **PUBLIC SERVICE COMMISSION**

#### CHAPTER 103

Statutory Authority: 1976 Code Section 58-3-140

103-102(5). Charter Bus

103-102(31). Equipped to Carry

103-102(32). Passenger

### **Synopsis:**

The Public Service Commission of South Carolina (Commission) has promulgated a regulation that amends the definition of a charter bus. Additionally, the Commission has promulgated regulations that define the terms “equipped to carry” and “passenger.” The purpose of amending Regulation 103-102(5) regarding the definition of a charter bus is to make the language in this regulation consistent with the language defining a limousine in Regulation 103-102(15) by adding the phrase “equipped to carry” to the charter bus definition. Additionally, this proposed regulation deletes language that states a limousine shall not be considered to be a charter bus. The current definition of a limousine is clear. Additionally, the phrase “equipped to carry” is used in the Commission’s regulations; however it is not currently defined in the regulations. Thus, the proposed definition will provide jurisdictional utilities and the public with a definition of this term. Further, the word “passenger” is also currently used in the Commission’s regulations; however, it is not defined. The proposed definition will cure this problem.

The Notice of Drafting regarding these regulations was published on January 23, 2009, in the *State Register*.

### **Instructions:**

Print the regulations in accordance with directions given to reflect amended regulation and new regulations.

103-102(5). Print this amended regulation as outlined below.

103-102(31). Print this new regulation as shown below.

103-102(32). Print this new regulation as shown below.

### **Text:**

103-102(5). Charter Bus. “Charter Bus” is a passenger carrier equipped to carry sixteen (16) or more passengers.

103-102(31). Equipped to Carry. "Equipped to carry" means the number of passengers a vehicle is capable of carrying based on the number of seatbelts in that vehicle. If seatbelts do not exist in or cannot be located by ORS Inspectors, ORS may alternatively calculate the number of passengers a vehicle is capable of carrying by utilizing the method set forth in the Federal Transportation Regulations to determine "seating capacity" pursuant to 49 C.F.R. §387.29. Efforts to circumvent regulation or proper licensing by removing or altering the number of seatbelts in a vehicle and/or otherwise altering the seating configuration will not absolve the carrier from failing to obtain the proper certificate from the commission.

103-102(32). Passenger. "Passenger" means every person carried or riding in a motor carrier, including the driver.

**Fiscal Impact Statement:**

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

**Statement of Rationale:**

The purpose of promulgating Regulations 103-102(5), 103-102(31), and 103-102(32) is to create uniformity and delete ambiguity in the Commission's regulations. The proposed regulations delete unnecessary language and provide guidance to the public when implementing and executing the Commission's regulations. There was no scientific or technical basis relied upon in the development of this regulation.

Document No. 4063  
**PUBLIC SERVICE COMMISSION**  
CHAPTER 103  
Statutory Authority: 1976 Code Section 58-3-140

103-181. Workers' Compensation Insurance  
103-220(d). Use of Leased Vehicles

**Synopsis:**

The Public Service Commission of South Carolina (Commission) proposes to amend two of its regulations. First, the Commission has promulgated a regulation that deletes Regulation 103-181. This regulation is unnecessary as Title 42 governs South Carolina workers' compensation laws. Next, the Commission has made proposed amendments to Regulation 103-220(d). The proposed changes to Regulation 103-220(d) clarify that the lessee of a leased vehicle has the exclusive possession, control, and use of leased vehicles and that the lessee is responsible for procuring insurance for the vehicle for the duration of the contract, lease, or other arrangement. Additionally, the proposed changes provide that the contract, lease, or other approved arrangement shall specify that the lessee has exclusive possession, control and use of the power unit and that the lessee must procure insurance for the leased vehicle for the duration of said agreement.

The Notice of Drafting was published in the *State Register* on December 26, 2008.

**Instructions:**

Print the regulations in accordance with directions given to reflect deleted regulation and new amended regulation.

103-181. Delete this regulation.  
103-220(d). Print the section of the regulation as outlined below.

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### **Text:**

103-220(d). Use of Leased Vehicles. Shall provide that the lessee has exclusive possession, control, and use of the power unit and bears the complete assumption of public responsibility (i.e., insurance) for the vehicle for the duration of said contract, lease, or other arrangement;

### **Fiscal Impact Statement:**

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

### **Statement of Rationale:**

The purpose of deleting Regulation 103-181 is Title 42 governs workers' compensation laws in South Carolina. Also, the purpose of the proposed amendments to Regulation 103-220(d) is to clarify the responsibilities of lessees in the use of leased vehicles. There was no scientific or technical basis relied upon in the development of these regulations.