

SOUTH CAROLINA STATE REGISTER DISCLAIMER

While every attempt has been made to ensure the accuracy of this State Register, the Legislative Council makes no warranties or representations regarding its accuracy or completeness, and each user of this product understands that the Legislative Council disclaims any liability for any damages in connection with its use. This information is not intended for commercial use and its dissemination by sale or other commercial transfer is not authorized, absent a written licensing agreement with the Legislative Council. For further information contact the Legislative Council at 803-734-2145.

SOUTH CAROLINA STATE REGISTER

PUBLISHED BY
THE LEGISLATIVE COUNCIL
of the
GENERAL ASSEMBLY

STEPHEN T. DRAFFIN, DIRECTOR
LYNN P. BARTLETT, EDITOR

P.O. BOX 11489
COLUMBIA, SC 29211
TELEPHONE (803) 734-2145

Published June 28, 2002

Volume 26 Issue No.6

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.

2002 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 | 1/11 | 2/8 | 3/8 | 4/12 | 5/10 | 6/14 | 7/12 | 8/9 | 9/13 | 10/11 | 11/8 | 12/13 |
| Publishing Date | 1/25 | 2/22 | 3/22 | 4/26 | 5/24 | 6/28 | 7/26 | 8/23 | 9/27 | 10/25 | 11/22 | 12/27 |

REPRODUCING OFFICIAL DOCUMENTS

Documents appearing in the *State Register* are prepared and printed at public expense. Media services are encouraged to give wide publicity to documents printed in the *State Register*.

PUBLIC INSPECTION OF DOCUMENTS

Documents filed with the Office of the State Register are available for public inspection during normal office hours, 8:30 A.M. to 5:00 P.M., Monday through Friday. The Office of the State Register is in the Legislative Council, Fourth Floor, Rembert C. Dennis Building, 1000 Assembly Street, in Columbia. Telephone inquiries concerning material in the *State Register* or the *South Carolina Code of Regulations* may be made by calling (803) 734-2145.

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.

SUBSCRIPTIONS

Subscriptions to the *South Carolina State Register* are available electronically through the South Carolina Legislature Online website at www.scstatehouse.net via an access code, or in a printed format. Subscriptions run concurrent with the State of South Carolina's fiscal year (July through June). The annual subscription fee for **either** format is \$95.00. Payment must be made by check payable to the Legislative Council. To subscribe complete the form below and mail with payment. Access codes for electronic subscriptions will be e-mailed to the address submitted on this form.

X-----X-----X

South Carolina State Register Subscription Order Form

| | |
|--|----------------|
| Name | Title |
| Firm | |
| Mailing Address | |
| Billing Address (if different from mailing address) | |
| Contact Person(s) | E-mail Address |
| Phone Number | Fax Number |
| Number of subscriptions: (Cost is \$95 per subscription. Checks payable to: Legislative Council) | |
| | Electronic |
| | Printed |

Mail this form to:
South Carolina State Register
Lynn P. Bartlett, Editor
P.O. Box 11489
Columbia, SC 29211
Telephone: **(803) 734-2145**

PART ONE
MAILED UNDER SEPARATE COVER

REGULATIONS SUBMITTED TO THE GENERAL ASSEMBLY

Status and Legislative Review Expiration Dates..... 1

GOVERNOR’S EXECUTIVE ORDERS

No. 2002-11 Petition for Annexation, Georgetown County..... 3
 No. 2002-12 Establish the Palmetto Greatest Generation Project Council 3
 No. 2002-13 Flags Flown Half-Staff in Tribute to Michael J. Rao..... 4
 No. 2002-14 Transportation of Plutonium on South Carolina Roads and Highways
 Prohibited..... 5

NOTICES

HEALTH AND ENVIRONMENTAL CONTROL, DEPARTMENT OF

ERRATA: Doc. No. 2614, R.30-1, Statement of Policy (Instruction Line Correction)..... 11
 Doc. No. 2697, R. 61-30, Environmental Protection Fees (Instruction and Citation Correction)..... 11

Cancellation and Rescheduling of Public Hearing on Document No. 2736, Air Pollution..... 7
 Certification of Need..... 7
 Maternal and Child Health Block Grant Public Hearing..... 12
 Stroller Site Settlement - Carbone of America Corp..... 12
 Stroller Site Settlement - Macalloy Corporation..... 14
 State Underground Petroleum Environmental Response Bank (SUPERB)..... 15

HEALTH AND HUMAN SERVICES, DEPARTMENT OF

2003 Social Services Block Grant Pre-Expenditure Report..... 16

LABOR, LICENSING AND REGULATION, DEPARTMENT OF

Occupational Safety and Health Standards 19

NOTICES OF DRAFTING REGULATIONS

EDUCATION, BOARD OF

Textbook Samples, Test Security, Homebound Instruction, Special Education, Assessment Program..... 20
 Early Childhood Programs, Career Centers, Graduation Requirements, Community Partnerships..... 20
 Teacher Grants, Defined Program Grades 9-12, Comprehensive Planning, Accreditation Criteria,
 Deregulation..... 21

| | |
|--|----|
| Teacher Certification, Teacher Education Program Approval, Teacher Evaluation..... | 22 |
| TABLE OF CONTENTS | |

**HEALTH AND ENVIRONMENTAL CONTROL, DEPARTMENT OF
Office of Ocean and Coastal Resource Management**

| | |
|--|----|
| Statement of Policy, Enforcement, Specific Project Standards for Tidelands and Coastal Waters (Docks and Bulkheads) | 22 |
| Environmental Protection Fees | 23 |
| Statement of Policy, Specific Project Standards for Beaches and the Beach/Dune System, Activities Allowed Seaward of Baseline (Permitting of Groins Seaward of the Baseline)..... | 24 |
| Activities Allowed Seaward of Baseline (Construction of Pools) | 24 |

REVENUE, DEPARTMENT OF

| | |
|---------------------------------------|----|
| Administrative Matters | 25 |
| Codification of Tax Regulations | 25 |

PROPOSED REGULATIONS

EDUCATION, STATE BOARD OF

| | |
|---|----|
| Document No. 2744 Intervention Where Quality of Education in a Local School District Is Impaired | 27 |
|---|----|

HEALTH AND ENVIRONMENTAL CONTROL, DEPARTMENT OF

| | |
|---|----|
| Document No. 2743 Classified Water..... | 28 |
|---|----|

FINAL REGULATIONS

ARCHIVES AND HISTORY, DEPARTMENT OF

| | |
|--|----|
| Document No. 2668 General Retention Schedule for State Personnel Records | 33 |
|--|----|

EDUCATION, STATE BOARD OF

| | |
|---|----|
| Document No. 2684 Renewal of Credentials..... | 36 |
| Document No. 2682 Requirements for Initial Certification at the Advanced Level..... | 39 |
| Document No. 2679 Summer Programs | 44 |
| Document No. 2681 Policies and Procedures and Unit Standards for Teacher Education Programs | 46 |

HEALTH AND ENVIRONMENTAL CONTROL, DEPARTMENT OF

| | |
|--|----|
| Document No. 2720 Communicable Diseases | 47 |
| Document No. 2697 Coastal Zone - Applying for a Permit, Decision on a Permit | 54 |
| Document No. 2673 Environmental Protection Fees | 58 |
| Document No. 2735 Hazardous Waste Management | 68 |
| Document No. 2715 Infectious Waste Management..... | 83 |
| Document No. 2672 Retail Food Establishment Inspection Fees | 86 |
| Document No. 2670 Standards of Performance for Asbestos Projects | 88 |

PART TWO

FINAL REGULATIONS

HEALTH AND ENVIRONMENTAL CONTROL, DEPARTMENT OF

| | | |
|-------------------|--|-----|
| Document No. 2646 | Standards for the Permitting of Agricultural Animal Facilities | 1 |
| Document No. 2698 | Standards for Stormwater Management and Sediment Reduction..... | 111 |
| Document No. 2719 | Vital Statistics | 113 |
| Document No. 2721 | Waste Combustion and Reduction | 131 |

INSURANCE, DEPARTMENT OF

| | | |
|-------------------|--|-----|
| Document No. 2705 | Deposits Required of Insurers | 139 |
| Document No. 2706 | Health Maintenance Organizations | 140 |
| Document No. 2704 | Salvage and Subrogation..... | 149 |

LABOR, LICENSING AND REGULATIONS, DEPARTMENT OF

| | | |
|-------------------|--|-----|
| Document No. 2686 | Recording and Reporting Occupational Injuries and Illnesses..... | 149 |
|-------------------|--|-----|

LOTTERY COMMISSION

| | | |
|-------------------|---------------------------------------|-----|
| Document No. 2694 | South Carolina Education Lottery..... | 172 |
|-------------------|---------------------------------------|-----|

NATURAL RESOURCES, DEPARTMENT OF

| | | |
|-------------------|--------------------------------------|-----|
| Document No. 2710 | Non-game and Endangered Species..... | 187 |
|-------------------|--------------------------------------|-----|

REVENUE, DEPARTMENT OF

| | | |
|-------------------|---|-----|
| Document No. 2650 | ABC Name and Cite Change | 191 |
| Document No. 2662 | Administrative, License, Income and Property Tax..... | 203 |
| Document No. 2695 | Alcoholic Beverage Regulations (Repeal)..... | 217 |
| Document No. 2651 | Alcoholic Liquor Advertising | 218 |
| Document No. 2636 | Sales, Property, Administrative, Estate, Video Game, Income Tax (Repeal)..... | 219 |
| Document No. 2658 | Sales Tax..... | 221 |

REGULATIONS SUBMITTED TO GENERAL ASSEMBLY 1

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: www.scstatehouse.net

| DOC No. | RAT No. | FINAL ISSUE | SUBJECT | EXP. DATE | AGENCY |
|------------|------------|----------------|--|--------------|--|
| 2541 | R109 | SR25-7 | Lic Comm Residential Care Facilities | | Department of Health and Envir Control |
| 2533 | R111 | SR25-9 | Criminal Justice Information System | | Law Enforcement Division |
| 2609 | R160 | SR26-1 | State Human Resources | | Budget and Control Board |
| 2567 | | SR26-2 | Req for Additional Area of Certification | | Board of Education |
| 2581 | | SR26-2 | Continuing Insurance Education | | Department of Insurance |
| 2600 | | SR26-2 | Need-based Grants Program | | Commission on Higher Education |
| 2601 | | SR26-2 | Palmetto Fellows Scholarship Program | | Commission on Higher Education |
| 2569 | | SR26-2 | Types and Levels of Credential Classif | | Board of Education |
| 2602 | | SR26-2 | Hunt Units and Wildlife Management | | Department of Natural Resources |
| 2566 | | SR26-4 | Graduation Requirements | | Board of Education |
| 2616 | | SR26-4 | Well Standards | | Department of Health and Envir Control |
| 2518 | | SR26-4 | Perinatal Care | | Department of Health and Envir Control |
| 2618 | | SR26-4 | Hunt Units and WMAs | | Department of Natural Resources |
| 2621 | | SR26-4 | Retail Managers; Finance Managers | | LLR: Manufactured Housing Board |
| 2586 | | SR26-5 | Definition of a Limousine | | Public Service Commission |
| 2613 | | SR26-5 | Assessment Program | | Board of Education |
| 2626 | | SR26-5 | Licensing Nonpublic Postsecondary Ed Instit | | Commission on Higher Education |
| 2614 | | SR26-5 | Defin, Permits, Sts for Tidelands Coastal | | Department of Health and Envir Control |
| 2623 | R.253 | SR26-5 | Standards for Permitting Body Piercing | | Department of Health and Envir Control |
| 2593 | | SR26-5 | Nitrogen Oxides | | Department of Health and Envir Control |
| 2625 | | SR26-5 | Student Loan Corp | | Commission on Higher Education |
| 2631 | | SR26-5 | Staff Leasing Services | | Department of Consumer Affairs |
| 2640 | | SR26-5 | Hazardous Waste management | | Department of Health and Envir Control |
| 2643 | | SR26-5 | Operation of Health Maintenance Org | | Department of Health and Envir Control |
| 2637 | | SR26-5 | Classified Waters | | Department of Health and Envir Control |
| 2645 | | SR26-5 | Public Swimming Pools | | Department of Health and Envir Control |
| 2630 | | SR26-5 | Drought Planning Response | | Department of Natural Resources |
| 2659 | | SR26-5 | End-of-Course Tests | | Board of Education |
| 2664 | R.279 | SR26-5 | Requirements for Limited License | | LLR: Board of Medical Examiners |
| 2678 | R.197 | SR26-3 | SC National Guard Student Loan Prog | | Commission on Higher Education |
| 2660 | R.243 | SR26-5 | Standards for Licensing Hospices | | Department of Health and Envir Control |
| 2657 | | SR26-5 | Seasons, Limits, Methods, Use WMA's | | Department of Natural Resources |
| 2685 | | SR26-5 | Real Property Owned by Department | | Department of Natural Resources |
| 2661 | | SR26-5 | State Primary Drinking Water | | Department of Health and Envir Control |
| 2671 | | SR26-5 | Standards for Wastewater Facility Construction | | Department of Health and Envir Control |
| 2690 | R.288 | SR26-5 | Trout Harvest | | Department of Natural Resources |
| 2667 | R.225 | SR26-4 | General Retention Schedule for State Financial Records | | Department of Archives and History |
| 2668 | | SR26-6 | General Retention Schedule for State Personnel Records | | Department of Archives and History |
| 2669 | R.226 | SR26-4 | General Retention Schedules for County Records | | Department of Archives and History |
| 2666 | R.224 | SR26-4 | General Retention Schedules for State Administrative Records | | Department of Archives and History |
| 2681 | | SR26-6 | Teacher Education Program Approval | | Board of Education |
| 2651 | | SR26-6 | Alcoholic Liquor Advertising | | Department of Revenue |
| 2650 | | SR26-6 | ABC Name and Cite Change | | Department of Revenue |
| 2662 | | SR26-6 | Administrative, License, Income and Property Tax | | Department of Revenue |
| 2695 | | SR26-6 | (Repeal) Alcoholic Beverage Regulations | | Department of Revenue |
| 2636 | | SR26-6 | (Repeal) Sales, Prop, Admin, Estate, Video Game, Income Tax | | Department of Revenue |
| 2658 | | SR26-6 | Sales Tax | | Department of Revenue |
| 2698 | | SR26-6 | Standards for Stormwater Management and Sediment Reduction | | Department of Health and Envir Control |
| 2672 | | SR26-6 | Retail Food Establishment Inspection Fees | | Department of Health and Envir Control |
| 2697 | | SR26-6 | Environmental Protection Fees | | Department of Health and Envir Control |
| 2670 | | SR26-6 | Standards of Performance for Asbestos Projects | | Department of Health and Envir Control |
| 2679 | | SR26-6 | Summer Programs | | Board of Education |
| 2682 | | SR26-6 | Requirements for Initial Certification at the Advanced Level | | Board of Education |
| 2694 | | SR26-6 | Education Lottery | | Education Lottery Commission |
| 2684 | | SR26-6 | Renewal of Credentials | | Board of Education |
| 2704 | | SR26-6 | Salvage and Subrogation (Repeal) | | Department of Insurance |
| 2705 | | SR26-6 | Deposits Required of Insurers | | Department of Insurance |

2 REGULATIONS SUBMITTED TO GENERAL ASSEMBLY

| DOC No. | RAT FINAL No. ISSUE | SUBJECT | EXP. DATE | AGENCY |
|---------|---------------------|---|-----------|---|
| 2706 | | SR26-6 Health Maintenance Organizations | | Department of Insurance |
| 2673 | | SR26-6 Environmental Protection Fees | | Department of Health and Envir Control |
| 2646 | | SR26-6 Standards for the Permitting of Agricultural Animal Facilities | | Department of Health and Envir Control |
| 2686 | R.393 | SR26-6 Recording and Reporting Occupational Injuries and Illnesses | | Department of Labor, Licensing and Regulation |
| 2687 | R.267 | SR26-5 General-Family Independence Program | | Department of Social Services |
| 2688 | R.246 | SR26-5 General-Food Stamp Program | | Department of Social Services |
| 2610 | | In Car Camera Videotaping Equipment | | Department of Public Safety |
| 2663 | | Bonds for Water and Wastewater Utilities | | Public Service Commission |
| 2710 | R.394 | SR26-6 Non-Game and Endangered Species | | Department of Natural Resources |
| 2711 | | Foster Care | | Department of Social Services |
| 2726 | | School Incentive Reward Program | | Board of Education |
| 2683 | R.450 | Requirements for Trade and Industrial Certification | | Board of Education |
| 2720 | R.366 | SR26-6 Communicable Diseases | | Department of Health and Envir Control |
| 2719 | R.323 | SR26-6 Vital Statistics | | Department of Health and Envir Control |
| 2721 | R.368 | SR26-6 Waste Combustion and Reduction | | Department of Health and Envir Control |
| 2715 | R.367 | SR26-6 Infectious Waste Management Regulations | | Department of Health and Envir Control |
| 2709 | | Nonpublic Postsecondary Institutions | | Commission on Higher Education |
| 2712 | | Residential Group Care Organizations for Children | | Department of Social Services |
| 2729 | | Fees | | LLR: Board of Pharmacy |
| 2731 | | Diseases and Health documentation | | Clemson University |
| 2727 | | Witchweed Quarantine | | Clemson University |
| 2733 | | Examination | | LLR: Board of Chiropractic Examiners |
| 2732 | | Advertising and Solicitation | | LLR: Board of Chiropractic Examiners |
| 2730 | | Criminal Justice Academy Training Regulations | | Department of Public Safety |

REQUESTED TO WITHDRAW (120 DAY REVIEW PERIOD TOLLED)

| DOC No. | DATE | SUBJECT | AGENCY |
|---------|---------|--------------------|-------------------------------|
| 2573 | 4 24 01 | Food Stamp Program | Department of Social Services |

RESOLUTION INTRODUCED TO DISAPPROVE (120 DAY REVIEW PERIOD TOLLED)

| DOC No. | DATE | SUBJECT | AGENCY |
|---------|---------|---|--|
| 2360 | 1 17 01 | LIFE Scholarship | Commission on Higher Education |
| 2629 | 4 03 02 | Specific Project Stds for Tidelands Coastal | Department of Health and Envir Control |

WITHDRAWN:

| DOC NO. | DATE | SUBJECT | AGENCY |
|---------|---------|---|---------------------------------|
| 2564 | 1 09 02 | Accreditation Criteria | Board of Education |
| 2611 | 3 27 02 | Highway Patrol, Wrecker Regulations | Department of Public Safety |
| 2620 | 4 12 02 | Percentage Storm or Wind/Hail Deduct | Department of Insurance |
| 2722 | 4 23 02 | Team Physicians; Limited Practice Permitted | LLR: Board of Medical Examiners |

NOTE: 2003 EXPIRATION DATES WILL BE CALCULATED AT A LATER DATE.

2002-11

WHEREAS, the Mount Gilead Development transmitted a petition for annexation of 26 lots and portions of seven other lots of land in Mount Gilead subdivision of Georgetown County with Horry County; and

WHEREAS, Sections 4-5-130 through 4-5-160 of the South Carolina Code of Laws requires that I appoint a four-person commission to carefully investigate the facts relating to the area and report in writing; and

WHEREAS, in Executive Order 2002-09, I appointed Bill Murray, who is unable to serve on the four-person commission due to unforeseeable circumstances; and

WHEREAS, the four-person commission has the responsibility of providing me with recommendations by June 1, 2002; and

WHEREAS, the four-person commission needs an extension to complete its recommendations.

NOW, THEREFORE, by virtue of the power and authority vested in me as Governor, pursuant to the Constitution and Laws of the State of South Carolina, I hereby declare that Executive Order 2002-09 is amended and appoint Al Hitchcock, Murrells Inlet, to serve on the four-person commission. Further, I hereby extend the deadline for the four-person commission to complete its duties and submit its recommendation to me by July 15, 2002

This Order shall take effect immediately.

**GIVEN UNDER MY HAND AND THE GREAT SEAL OF
THE STATE OF SOUTH CAROLINA, THIS 21st DAY OF
MAY, 2002.**

**JIM HODGES
Governor**

2002-12

WHEREAS, during World War II, the most destructive war in history, South Carolinians at home and abroad displayed great determination and heroic patriotism in facing one of the greatest human struggles of all time; and

WHEREAS, South Carolinians' legacy of valor and ingenuity in combat contributed greatly to American and Allied efforts in the battle to suppress totalitarianism and preserve democracy; and

WHEREAS, at home, South Carolinians served their country and made sacrifices in many other ways, such as by generously contributing to creations such as the Santee Cooper public power system and the Croft Military Infantry Replacement Training Camp, as well as supporting numerous other military facilities located throughout South Carolina; and

WHEREAS, the integral role played by South Carolinians during a pivotal period in history is a meaningful and relevant component of our State's heritage and identity and is important to the continuous growth and progress of South Carolina; and

4 EXECUTIVE ORDERS

WHEREAS, with greater understanding and increased appreciation and respect for the sacrifices and courage of the men and women of the greatest generation that any society has ever produced, the educational experience of South Carolina's students would be meaningfully enhanced.

NOW THEREFORE, I do hereby establish the Palmetto Greatest Generation Project Council ("Council") to deliver the lessons and visions of South Carolina's Greatest Generation to the classrooms of South Carolina. The Council shall consist of members who are military veterans, educational experts, clergy, and other individuals necessary to accomplish the Council's mission. The Council shall, but is not limited to:

1. Developing curriculum standards and materials sufficient to carry out the Council's mission in every public high school in the State of South Carolina;
2. Developing video, radio, and web site programs to enable students and other citizens to maximize their knowledge of the feats of South Carolina's Greatest Generation;
3. Recruiting South Carolina's Greatest Generation-era citizens to record their stories and provide first-hand presentations to high school students;
4. Developing a strategic plan for implementing the Palmetto Greatest Generation Project's mission and provide quarterly reports to the Governor;
5. Distributing copies of the book *The Greatest Generation* to high schools across the State at the beginning of the 2002-03 school year for use in United States history classes; and
6. Selecting and tracking, during the project's inaugural year, twenty-five (25) pilot schools using geographical and economic diversity.

This Order shall take effect immediately.

**GIVEN UNDER MY HAND AND THE GREAT SEAL OF
THE STATE OF SOUTH CAROLINA, THIS 6th DAY OF
JUNE, 2002.**

**JIM HODGES
Governor**

2002-13

WHEREAS Michael J. Rao, a Senior Trooper with the South Carolina Highway Patrol, was killed as a result of injuries sustained while he was assisting motorists on I-95 in Clarendon Country, South Carolina; and

WHEREAS, Michael J. Rao was a law enforcement officer who died in the line of duty; and

WHEREAS, Michael J. Rao dedicated his career to protecting the citizens of the State of South Carolina.

NOW, THEREFORE, by virtue of the power and authority vested in me as Governor, pursuant to the Constitution and Laws of the State of South Carolina, I hereby order that the flags of the United States and the State of South Carolina be flown at half-staff upon all state buildings and grounds on Sunday, June 16, 2002 in tribute to Michael J. Rao.

GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 14th DAY OF JUNE, 2002.

JIM HODGES
Governor

2002-14

WHEREAS, according to U.S. Attorney General John Ashcroft, a "known terrorist" with connections to al Qaeda who allegedly planned to build and explode a radioactive "dirty bomb" in the United States has been recently captured by federal authorities and is presently being detained as an enemy combatant in Charleston, South Carolina;

WHEREAS, a "dirty bomb" is a conventional incendiary device laced with radioactive materials that upon detonation scatters and disperses radioactive particles into the atmosphere, thereby exposing potentially thousands of persons to radiation;

WHEREAS, weapons-grade plutonium is a primary ingredient utilized in creating dirty bombs;

WHEREAS, the United States Department of Energy has publicly announced that it will begin sending truck shipments of weapons-grade plutonium to the Savannah River Site located in Aiken and Barnwell Counties, South Carolina as soon as June 15, 2002;

WHEREAS, when, in the Governor's opinion, a danger exists to the person or property of any citizen and the peace and tranquility of the State or of any political subdivision or particular area of the State designated by him is threatened, the Governor shall declare an emergency and may take such measures and do all and every act and thing which he may deem necessary in order to prevent violence or threats of violence to the person or property of citizens of the State and to maintain peace, tranquility and good order, pursuant to § 1-3-410, et seq., of the South Carolina Code of Laws;

WHEREAS, the Governor may further cope with such threats and danger by directing and ordering any person or group of persons to do any act which would, in his opinion, prevent or minimize danger to life, limb or property, or prevent a breach of the peace; and he may order any person or group of persons to refrain from doing any act or thing which would, in his opinion, endanger life, limb or property, or cause, or tend to cause, a breach of the peace, or endanger the peace and good order of the State or any section or community thereof, and he shall have full power by use of all appropriate available means to enforce such order or proclamation, pursuant to § 1-3-430;

WHEREAS, for the purposes already stated, the Governor may also order any and all law enforcement officers of the State or any of its subdivisions to do whatever may be deemed necessary to maintain peace and good order; order the discontinuance of any transportation or other public facilities, or, in the alternative, direct that such facilities be operated by a State agency; or authorize, order or direct any State, county or city official to enforce the provisions of such proclamation in the courts of the State by injunction, mandamus, or other appropriate legal action, pursuant to § 1-3-440; and

WHEREAS, a legitimate threat of theft, diversion, or use of plutonium by terrorists exists that requires serious protective measures to prevent the terrorist use of plutonium in South Carolina and to protect the citizens of South Carolina from the threat and effect of dirty bombs or other related terrorist devices;

6 EXECUTIVE ORDERS

THEREFORE, I hereby declare that an emergency exists and order that the transportation of plutonium on South Carolina roads and highways is prohibited; that any persons transporting plutonium shall not enter the State of South Carolina; and that any persons nevertheless attempting or intending to transport plutonium along the public thoroughfares of the State of South Carolina shall give notice of such intention and to cease and desist from such action until further direction is given.

I further order and direct the South Carolina Department of Public Safety to increase and enhance its security, patrol, inspection, and surveillance measures along South Carolina's highways, particularly in the areas along our state's borders and surrounding the Savannah River Site, and to enforce the provisions of this Executive Order.

**GIVEN UNDER MY HAND AND THE GREAT SEAL OF
THE STATE OF SOUTH CAROLINA, THIS 14th DAY OF
JUNE 2002.**

JIM HODGES
Governor

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

NOTICE OF CANCELLATION AND RESCHEDULING OF PUBLIC HEARING

Document No. 2736

R.61-62 - Air Pollution Control Regulations and Standards

The Department of Health and Environmental Control (Department) published a Notice of Proposed Regulation in the *South Carolina State Register* on April 26, 2002, of its intent to amend Regulation 61-62 - *Air Pollution Control Regulations and Standards*. In that notice, the Department announced the date of June 13, 2002, for a public hearing before the Board of Health and Environmental Control (Board) concerning the proposed amendments. The Notice of Proposed Regulation anticipated amendments to R.61-62.63, subpart B based on a proposed EPA rule published on March 23, 2001 [66 FR 16317]. The final EPA amendments to 40 CFR Part 63, subpart B were promulgated in the *Federal Register* on April 5, 2002 [67 FR 16581] but are currently in litigation. A staff-conducted informational forum was held on May 28, 2002, for the purpose of answering questions, clarifying issues, and accepting formal comments from interested public on the proposed amendments. No oral or written comments were received during the informational forum regarding any of the other proposed amendments to Regulation 61-62 - *Air Pollution Control Regulations and Standards*. The purpose of this notice is to cancel the June date and reschedule the public hearing for July 11, 2002, to allow more time for the Department to consider its actions regarding the proposed amendments to R.61-62.63, subpart B.

The public hearing has been rescheduled to be held at the regularly-scheduled Board meeting on July 11, 2002, in the Board Room of the Commissioner's Suite, Third Floor, Aycock Building of the Department of Health and Environmental Control, 2600 Bull St., Columbia, S.C. The Board meeting commences at 10:00 a.m. at which time the Board will consider items on its agenda in the order presented. The order of presentation for public hearing on July 11, 2002, will be noticed in the Board's agenda to be published by the Department 10 days in advance of the meeting. Interested persons are invited to make oral or written comments on the proposed regulation at the public hearing. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes and, as a courtesy, are asked to provide written copies of their presentations for the record. Any comments made at the public hearing will be given consideration in formulating the final version of the regulations and the SIP revision. Questions concerning this notice should be addressed to Dennis Camit, Bureau of Air Quality at (803) 898-4284.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

In accordance with Section 44-7-200(C), Code of Laws of South Carolina, the public is hereby notified that a Certificate of Need application has been accepted for filing and publication June 28, 2002, for the following project(s). After the application is deemed complete, affected persons will be notified that the review cycle has begun. For further information, please contact Mr. Albert N. Whiteside, Director, Division of Planning and Certification of Need, 2600 Bull St., Columbia, SC 29201 at (803) 545-4200.

Affecting Anderson County

Renovation and replacement of existing Magnetic Resonance Imaging (MRI) unit.
Anderson Area Medical Center/AnMed Health Campus
Anderson, South Carolina
Project Cost: \$1,073,477

8 NOTICES

Affecting Beaufort County

Construction of a free-standing ambulatory surgery center with two (2) operating rooms.
The Outpatient Surgery Center of Hilton Head, LLC
Hilton Head Island, South Carolina
Project Cost: \$6,849,003

Affecting Charleston County

Relocation and replacement of a linear accelerator from the downtown campus of Roper Hospital to Mt. Pleasant.
Roper Mt. Pleasant Medical Center
Mt. Pleasant, South Carolina
Project Cost: \$4,296,276

Affecting Dorchester County

Addition of eight (8) beds to the Residential Treatment Facility (RTF) for children and adolescents for a total of 60 RTF beds.
New Hope, Charleston
Summerville, South Carolina
Project Cost: \$141,011

Affecting Florence County

Lease of existing 88 bed nursing home to Cooke Associates of Florence, Inc.
Clarke Nursing Center
Florence, South Carolina
Project Cost: \$1,269,743

Affecting Greenville County

Renovation for the addition of an Electron Beam Tomography Scanner, at the Eastside Ambulatory Care Center.
Innervision, Inc.-Electron Beam Tomography Scanner
Greenville, South Carolina
Project Cost: \$2,980,755

Affecting Lexington County

Construction and major renovation for the expansion of the hospital, to include perioperative services with new operating rooms (from 15 to 21, inclusive of cysto room), and clinical support space, clinical laboratory, and new (relocated) and renovated support service areas and expansion of the energy plant.
Lexington Medical Center
West Columbia, South Carolina
Project Cost: \$93,620,574

Affecting Oconee County

Construction and renovation for the replacement of the current 1.0T Magnetic Resonance Imaging (MRI) unit with a 1.5T MRI and the addition of a multislice Computed Tomography (CT) scanner for a total of one fixed MRI and two fixed CT units.

Oconee Memorial Hospital
Seneca, South Carolina
Project Cost: \$4,792,081

Affecting Richland County

Construction of a patient care wing for the addition of fifteen (15) rehabilitation beds and support space for a total of 111 rehabilitation beds.

HEALTHSOUTH Rehabilitation Hospital
Columbia, South Carolina
Project Cost: \$2,948,634

Affecting Williamsburg County

Construction on the hospital campus to establish a sixteen (16) bed Residential Treatment Facility (RTF) for children and adolescents resulting in a total licensed bed capacity of 78 acute care beds and sixteen (16) RTF beds.

New Hope Landing
Williamsburg Regional Hospital
Kingstree, South Carolina
Project Cost: \$480,000

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 June 28, 2002. "Affected persons" have 30 days from the above date to submit comments or requests for a public hearing to Mr. Albert N. Whiteside, Director, Division of Planning and Certification of Need, 2600 Bull Street, Columbia, S.C. 29201. For further information call (803) 545-4200.

Affecting Anderson County

Renovation and replacement of existing Magnetic Resonance Imaging (MRI) unit.

Anderson Area Medical Center/AnMed Health Campus
Anderson, South Carolina
Project Cost: \$1,073,477

Affecting Florence County

Renovations and software upgrade for the current Magnetic Resonance Imaging (MRI) Scanner.

Carolinas Hospital System
Florence, South Carolina
Project Cost: \$1,152,864

Lease of existing 88 bed nursing home to Cooke Associates of Florence, Inc.

Clarke Nursing Center
Florence, South Carolina
Project Cost: \$1,269,743

10 NOTICES

Affecting Georgetown County

Construction of an ambulatory surgery center with two (2) operating rooms.

Atlantic Surgery Center

Murrells Inlet, South Carolina

Project Cost: \$1,166,690

Affecting Horry County

Establishment of a specialty hospital to house sixteen (16) Residential Treatment Facility (RTF) beds for children and adolescents, and eight (8) psychiatric beds.

Lighthouse Care Center of Conway

Conway, South Carolina

Project Cost: \$1,026,537

Affecting Lexington County

Construction and major renovation for the expansion of the hospital, to include perioperative services with new operating rooms (from 15 to 21, inclusive of cysto room), and clinical support space, clinical laboratory, and new (relocated) and renovated support service areas and expansion of the energy plant.

Lexington Medical Center

West Columbia, South Carolina

Project Cost: \$93,620,574

Affecting Richland County

Addition of eight (8) Nursing Home beds that do not participate in the Medicaid (Title XIX) Program for a total of thirty-eight (38) Nursing Home beds.

Ridgeview Manor

Hopkins, South Carolina

Project Cost: \$7,159

Purchase two (2) multi-slice Computed Tomography (CT) Scanners for a physicians practice.

South Carolina Oncology Associates, P.A.

Columbia, South Carolina

Project Cost: \$3,566,572

Affecting Union County

Conversion of five private patient rooms to semi-private rooms for the addition of five nursing home beds which will not participate in the Medicaid (Title XIX) Program for a total of 113 nursing home beds.

Ellen Sagar Nursing Home

Union, South Carolina

Project Cost: \$6,000

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

ERRATA

State Register Document Number 2614

By State Register Document Number 2614, the Department of Health and Environmental Control amended R.30-1, *Statement of Policy*, effective May 24, 2002, by publication in the State Register.

This errata will correct the instruction at R.30-1.D(7) to read:

Add new definition 30-1.D(7) in alphanumeric order; remaining existing 30-1.D(7) - (50) definitions are renumbered accordingly.

This errata will correct the instruction at 30-12.A(2)(q)(iv) to read:

Replace 30-12.A(2)(q)(iv) to read:

State Register Document Number 2697

By State Register Document Number 2697, the Department of Health and Environmental Control amended R.61-30, *Environmental Protection Fees*, effective June 28, 2002, by publication in the State Register.

This errata is to correct the citation in the instruction to add R.61-30.G(14) and also to correct the citation within the text of this section. R.61-30.G(14) will be changed to R.61-30.G(13) to read:

Add new section R.61-30.G(13) to read:

(13) Coastal Zone Management Program

(a) General

(i) The fees assessed are those fees sufficient to cover a portion of the reasonable costs associated with the development, processing, and administration of the Coastal Zone Management Program.

(ii) Fees collected shall be placed in a separate non-reverting account within the Department to be used exclusively for the expenses in G(13)(a)(i), except for the amounts dedicated to the Coastal Resources Access Fund (CRAF). DHEC-OCRM shall make matching grants from the fund on a 50/50 basis to local governments in the South Carolina Coastal Zone for projects which enhance the public's use and enjoyment of coastal resources. A portion of the funds collected as per G(13)(b) shall be dedicated to the CRAF.

(iii) Local governments will only be charged the fee for a minor activity and State agencies will not be charged.

(b) Critical Area Permit Application Fees

(i) Minor activity: \$50.00

(ii) Major activity: \$1000.00

(iii) Extensions or transfers of minor permits: \$25.00

(iv) Extensions or transfers of major permits: \$100.00

12 NOTICES

This errata will also correct the citation in the amendment at R.30-2(B)(9). This section is corrected to read:

R.30-2(B)(9). The administrative fees for permit applications are included in R.61-30.G(13).

**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
NOTICE OF PUBLIC HEARING**

The South Carolina Department of Health and Environmental Control (SC DHEC) will conduct a public hearing concerning the 2003 Title V Maternal and Child Health Block Grant (MCHBG) on Thursday, July 11, 2002. The hearing will be held in the Peoples Auditorium on the third floor of the Sims/Aycock Building located at 2600 Bull Street, Columbia, SC, from 6:00 p.m. to no later than 8:00 p.m.

The State of South Carolina receives MCHBG funds from the U. S. Department of Health and Human Services, Maternal and Child Health Bureau under the authorization of Title V of the Social Security Act of 1935. The grant funds activities in the areas of access to quality maternal and child health services, prenatal, delivery, and post-partum care for at-risk, low income women, reduction of infant mortality and handicapping conditions among children, immunizations, rehabilitation services, and the promotion of family-centered, community-based, coordinated care for children with special health care needs.

The public is invited to attend the hearing and comment concerning proposed plans for utilization of these block grant funds. Comments received concerning the MCHBG will be submitted to the Maternal and Child Health Bureau as part of South Carolina's MCHBG application.

Copies of the MCHBG 2003 grant proposal will be available for public inspection from June 12, 2002 to July 11, 2002, during normal business hours at the SC Department of Health and Environmental Control, Maternal and Child Health Bureau, Room 0-426, Robert Mills Building, 1751 Calhoun Street, Columbia, SC.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

| | | | |
|--------------------------------|---|-------------------------|----------------|
| In re: STOLLER SITE LITIGATION |) | Master File No.: | 2-97-CV-726-12 |
| |) | Consolidated Case Nos.: | 2:98-0345-12 |
| |) | | 2:98-1571-12 |
| |) | | 2:98-3635-12 |
| Carbone of America Corp. |) | | 2:99-1610-12 |
| |) | | 2:99-2292-12 |
| |) | | |

NOTICE OF SETTLEMENT

PLEASE TAKE NOTICE that the South Carolina Department of Health and Environmental Control ("DHEC" or the "State") entered into a Settlement Agreement with Carbone of America Corporation dated May 1, 1998 ("Carbone Settlement Agreement"), and a Ratification of Settlement and Motion to Approve Settlement

dated May 29, 2001 with Carbone of America Corp. ("Carbone"). The Carbone Settlement Agreement provides that upon approval by the Court, it shall be entered as a final judgment against Carbone. The Carbone Settlement Agreement is subject to a thirty-day public comment period, consistent with Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") Section 122, 42 U.S.C. Section 9622 and the South Carolina Hazardous Waste Management Act ("SCHWMA").

The Carbone Settlement Agreement relates to the alleged release, and threatened release, of hazardous substances at (1) a former fertilizer manufacturing facility located at 7747 Highway 17 South, near the community of Ravenel, South Carolina; (2) the three disposal areas located nearby along TNT Road ("Satellite Areas"); (3) the transportation corridor between the property located at 7747 Highway 17 South and the Satellite Areas; and (4) the Caw Caw Swamp (collectively referred to as the "Site").

The Carbone Settlement Agreement provides for a release of Carbone from further liability related to the matters covered by the Carbone Settlement Agreement, subject to conditions and reopeners, and confers contribution protection upon Carbone pursuant to CERCLA Section 113, 42 U.S.C. Section 9613.

On May 29, 2001, DHEC ratified and moved the Court to approve the Carbone Settlement Agreement and notice was provided to all identified potentially responsible parties and other interested parties and/or entities on June 29, 2001. DHEC is publishing Notice of the Carbone Settlement Agreement in the June 2002 South Carolina State Register publication.

Copies of the Carbone Settlement Agreement and other papers related to this matter can be viewed and/or obtained by providing a written Freedom of Information request to the South Carolina Department of Health and Environmental Control at:

Freedom of Information Office
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201-1708

Any comments must be submitted in writing, postmarked within thirty days of the publication in the State Register addressed to:

Jacquelyn S. Dickman, Deputy General Counsel
Office of General Counsel
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

UPON APPROVAL AND ENTRY OF THE CARBONE SETTLEMENT AGREEMENT BY THE COURT, ANY AND ALL CLAIMS BY ANY AND ALL PERSONS AGAINST CARBONE SEEKING CONTRIBUTION FOR MATTERS ENCOMPASSED BY THE CARBONE SETTLEMENT AGREEMENT SHALL BE FORECLOSED.

June 11, 2002.

14 NOTICES

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

In re: STOLLER SITE LITIGATION) Master File No.: 2-97-CV-726-12
) Consolidated Case Nos.: 2:98-0345-12
) 2:98-1571-12
Macalloy Corporation) 2:98-3635-12
) 2:99-1610-12
) 2:99-2292-12
)

NOTICE OF SETTLEMENT

PLEASE TAKE NOTICE that the South Carolina Department of Health and Environmental Control ("DHEC" or the "State") entered into a Settlement Agreement with Macalloy Corporation dated October 17, 1997 ("Macalloy Settlement Agreement"). The Macalloy Settlement Agreement provides that upon approval by the Court, it shall be entered as a final judgment against Macalloy Corporation. The Macalloy Settlement Agreement is subject to a thirty-day public comment period, consistent with Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") Section 122, 42 U.S.C. Section 9622 and the South Carolina Hazardous Waste Management Act ("SCHWMA").

The Macalloy Settlement Agreement relates to the alleged release, and threatened release, of hazardous substances at (1) a former fertilizer manufacturing facility located at 7747 Highway 17 South, near the community of Ravenel, South Carolina; (2) the three disposal areas located nearby along TNT Road ("Satellite Areas"); (3) the transportation corridor between the property located at 7747 Highway 17 South and the Satellite Areas; and (4) the Caw Caw Swamp (collectively referred to as the "Site").

The Macalloy Settlement Agreement provides for a release of Macalloy Corporation from further liability related to the matters covered by the Macalloy Settlement Agreement, subject to conditions and reopeners, and confers contribution protection upon Carbone pursuant to CERCLA Section 113, 42 U.S.C. Section 9613.

The Macalloy Settlement Agreement was filed with the Court on February 9, 1998. Notice of the Macalloy Settlement Agreement was filed with the Court on March 9, 1998, and was mailed to all identified potentially responsible parties and/or other interested parties on or around March 5, 1998. All parties initially objecting to the Macalloy Settlement Agreement have rescinded their objections and are in agreement with DHEC's entry into the Macalloy Settlement Agreement. DHEC will publish Notice of the Macalloy Settlement Agreement in the June 2002 South Carolina State Register publication and intends to ratify and move the Court to approve the Macalloy Settlement Agreement.

Copies of the Macalloy Settlement Agreement and other papers related to this matter can be viewed and/or obtained by providing a written Freedom of Information request to the South Carolina Department of Health and Environmental Control at:

Freedom of Information Office
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201-1708

Any comments must be submitted in writing, postmarked within thirty days of the publication in the State Register addressed to:

Jacquelyn S. Dickman, Deputy General Counsel
Office of General Counsel
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

UPON APPROVAL AND ENTRY OF THE CARBONE SETTLEMENT AGREEMENT BY THE COURT, ANY AND ALL CLAIMS BY ANY AND ALL PERSONS AGAINST CARBONE SEEKING CONTRIBUTION FOR MATTERS ENCOMPASSED BY THE CARBONE SETTLEMENT AGREEMENT SHALL BE FORECLOSED.

June 11, 2002.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

PUBLIC NOTICE

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. 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 individuals listed below, please submit your comments in writing, no later than July 29, 2002 to:

Contractor Certification Program
South Carolina Department of Health and Environmental Control
Bureau of Underground Storage Tank Management
Attn: Barbara Boyd
2600 Bull Street
Columbia, SC 29201

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

Class I

Aquaterra Engineering, LLL
Engineering Tectonics, PA
Hanson Professional Services, Inc.

Class II

16 NOTICES

DEPARTMENT OF HEALTH AND HUMAN SERVICES

PUBLIC NOTICE

The Department of Health and Human Services (DHHS) hereby gives notice of the availability of the "FFY-2003 Social Services Block Grant (SSBG) Pre-Expenditure Report" to the citizens of South Carolina for review and comment. The report reflects plans of the DHHS/State of South Carolina to expend SSBG funds for the 2003 fiscal year, October 1, 2002 through September 30, 2003.

This notice is given pursuant to the requirements of Title XX, Section 2004 of the Social Security Act (as enacted in the Omnibus Budget Reconciliation Act of 1981 [P.L. 97-35] and codified at 42 U.S.C. 1397c). Comments regarding this notice will be accepted for a period of thirty days from the date it is posted.

Written comments about the FFY-2003 Pre-Expenditure Report may be submitted to the Bureau of Community Services, Department of Health and Human Services, Post Office Box 8206, Columbia, South Carolina 29202-8206. Any written comments submitted may be reviewed by the public at the Department of Health and Human Services, Division of Program Development, 8th floor – room 810, 1801 Main Street, Columbia, South Carolina, Monday through Friday between the hours of 9:00 A.M. and 5:00 P.M.

A copy of the final and complete FFY-2003 SSBG application and post-expenditure report for FFY-2001 may be obtained through written request to the DHHS address listed above or may be accessed through the DHHS Internet site on the World Wide Web at <http://www.dhhs.state.sc.us>. Final Versions of the full report will also be on file in the state's public libraries.

Department of Health and Human Services
FY 2003 Pre-Expenditure Report

| SERVICE NAME | ADULTS | CHILDREN | TOTAL FUNDS |
|-----------------------------------|--------------------|---------------------|---------------------|
| Adoption Services | | \$153,250 | \$153,250 |
| Case Management* | \$48,181 | \$89,479 | \$137,660 |
| Counseling Services | \$118,381 | \$445,337 | \$563,718 |
| Day Care Adults | \$255,705 | | \$255,705 |
| Day Care Children | | \$3,911,945 | \$3,911,945 |
| Education/Training Services | \$341,870 | | \$341,870 |
| Foster Care Services - Children | | \$5,187,211 | \$5,187,211 |
| Home Based Services | \$2,521,984 | \$1,418,616 | \$3,940,600 |
| Home Delivered Meals | \$997,791 | | \$997,791 |
| Prevention/Intervention | | 1,388,588 | \$1,388,588 |
| Protective Services Adults | \$2,601,334 | | \$2,601,334 |
| Protective Services Children** | | \$6,206,561 | \$6,206,561 |
| Special Services for the Disabled | \$78,425 | | \$78,425 |
| Transportation | \$16,552 | \$3,390 | \$19,942 |
| Other Services | \$138,992 | \$492,789 | \$631,781 |
| TOTAL SERVICE DOLLARS | \$7,156,671 | \$19,259,901 | \$26,416,572 |
| DHHS Administration | | | \$1,932,308 |
| TOTAL OTHER EXPENDITURES | | | \$1,932,308 |
| GRAND TOTAL** | | | \$28,348,880 |

Note: The SSBG program does not pay more than 8% indirect cost rate for purchase of services and training.

*For purchased services case management from providers other than SCDSS.

** Includes transfer of \$4,248,632 from TANF to SSBG.

18 NOTICES

SERVICES FUNDED IN TOTAL OR IN PART BY SSBG

Adoption Preservation Services are provided to maintain, support and strengthen a family created through adoption.

Adult Protective Services are available to protect incapacitated adults from abuse, neglect and exploitation, and if possible, to help them resume their role as primary protector of themselves.

Child Care and Development provides supervised, planned developmental activities and nutritious meals and snacks to children through 12 years of age or through 18 years of age if the child has special needs. The service is available to parents or caretakers who are working, in school or in training; to children in need of protection; and to children who are handicapped.

Child Protective Services are provided to families whose children have been abused or neglected and also includes temporary emergency placement of children as a service component.

Day Care for Adults is offered to individuals who require hands-on assistance with any two activities of daily living or who may require supervision in a structured environment due to moderate memory or cognitive impairment and who lack other formal or informal resources.

Family Management Counseling includes an array of services to enhance self-sufficiency, knowledge, skills and coping mechanisms provided to individuals or families at risk of entry into a more restrictive living environment or service system.

Foster Care Services include assessment of abused, neglected or abandoned children's needs; case planning and management to assure that children receive proper care in a licensed or approved environment; room and board or medical care; counseling of the child, the child's parents and foster parents; and referral and assistance in obtaining other necessary supportive services.

Home Based Treatment Services are time-limited clinical interventions designed to defuse crises that threaten a child's stability within the home environment. **(Listed in the SSBG Plan under the federal services definition-Prevention/Intervention Services)**

Home Delivered Meals are provided to individuals of any age who are homebound because of a physical or mental disability.

Homemaker Services are offered to adults and children receiving protective services and to individuals who are frail, chronically ill or disabled, and who do not qualify for Medicaid-sponsored skilled or intermediate nursing care. **(Listed in the SSBG Plan under the federal service definition Home Based Services)**

Socialization and Developmental Services are provided to children 17 years of age and under and are designed to enable the child to develop socially, physically and emotionally. **(Listed in the SSBG Plan under federal service definition for Other Services)**

Special Services for Handicapped and Disabled Adults provide habilitative and rehabilitative services to assist individuals in attaining the highest possible level of functioning and independence.

Special Services for the Pregnant Woman are available to expectant mothers who are in need of out-of-home placement to ensure the health and safety of the mother and unborn child, and to help with concerns related to pregnancy. It also includes services to parents of young children to assist them in achieving independence and providing nurturing care for their children. **(Listed in the SSBG Plan under federal service definition for Other Services)**

Training includes the DHHS Training Fund and supports training of SCDSS caseworkers. The DHHS Training Fund is designed to promote quality service provision to individuals and families by making funds for training and conferences available to all SSBG providers.

Transportation Services are provided to elderly or physically or mentally handicapped adults or children who have no available means of transportation to access SSBG services or to such places as the grocery store, doctor's office, pharmacy, or food stamp office.

DEPARTMENT OF LABOR, LICENSING AND REGULATION

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 August 7, 2002, at 10:00 a.m. at the S.C. Department of LLR, 1st floor, room 103, 3600 Forest 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 7 (Construction)

Revisions to 1926.200-1926.203 on Signs, Signals & Barricades.

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 them can be obtained or reviewed at the S.C. Department of LLR during normal business hours by contacting the Public Information Office at (803) 896-4380.

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 her/his presentation on the particular matter no later than July 29, 2002. Any person who wishes to express her/his 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 July 29, 2002.

Rita M. McKinney
Director

20 DRAFTING

STATE BOARD OF EDUCATION CHAPTER 43

Statutory Authority: S.C. Code Ann. Sections 59-5-60 (1990) and 59-5-65 (1990 and Supp. 2001)

Notice of Drafting:

The State Board of Education proposes to repeal or amend regulations regarding textbook samples, test security, homebound instruction, special education and the assessment program.

Interested persons may submit comments to Dr. Sandra Lindsay, Deputy Superintendent, Division of Curriculum Services & Assessment, 1429 Senate Street, Room 805, Rutledge Building, Columbia, South Carolina. To be considered, comments must be received no later than 5:00 p.m. on July 5, 2002, the close of the drafting comment period.

Synopsis:

The State Board of Education proposes to repeal or amend regulations to

1. 43-73 Disposition of Textbook Samples after State Adoption Process. Amendments will reduce the number of sets of adopted instructional materials housed at the State Department from two to one and revise outdated terminology.
2. 43-100 Test Security. Amendments to reflect the State Assessment Program in State Board of Education Regulation 43-262 that was amended and became effective May 24, 2002.
3. 43-241 Homebound Instructions. Amendments to provide clarification to local educational agencies regarding the delivery of appropriate educational services to students on medical homebound and funding for these services by the State Department of Education.
4. 43-243 Special Education, Education of Students with Disabilities. Amendments are required as a result of the review of South Carolina's eligibility document by the Office of Special Education Programs and also federal monitoring.
5. 43-243.1 Criteria for Entry into Programs of Special Education for Students with Disabilities
Amendments need to be made to 43-243 & 43-243.1 in order to clarify criteria for eligibility for the category of a preschool child with a disability.
6. 43-262.1 Basic Skills, Assessment Program - Kindergarten Objectives
7. 43-262.2 Basic Skills, Assessment Program Readiness Test
8. 43-262.5 Minimum Standards for the Determination of Readiness
9. 43-262.6 Basic Skills Assessment Program-Writing Test: Minimum Standards of Student Achievement; Scoring Criteria
Regulations 262.1, 262.2, 262.5 & 262.6 will be repealed. The Readiness Assessment under Basic Skills Assessment Program (BSAP) has been replaced with the S.C. Readiness Assessment under the proviso of the Education Accountability Act of 1998.

Legislative review of these proposals will be required.

STATE BOARD OF EDUCATION CHAPTER 43

Statutory Authority: S.C. Code Ann. Sections 59-5-60 (1990) and 59-5-65 (1990 and Supp. 2001)

Notice of Drafting:

The State Board of Education proposes to repeal or amend regulations relating to early childhood programs, career centers, graduation requirements, and community partnerships.

Interested persons may submit comments to Calvin Jackson, Deputy Superintendent, Division of District and Community Services, State Department of Education, 1429 Senate Street, Room 908, Rutledge Building, Columbia, South Carolina 29201. To be considered, comments must be received no later than 5:00 p.m. on July 5, 2002, the close of the drafting comment period.

Synopsis:

The State Board of Education proposes to repeal or amend the following regulations.

1. 43-236 Career or Technology Centers/Comprehensive High Schools. Amendments to update language to reflect what is actually being done at the career and technology centers in the state.
2. 43-264.1 Half Day Child Development Programs. Regulation to be amended because the assessment instrument (CSAB) described in the regulation is no longer being used.
3. 43-267 Early Childhood Assistance Program. Amendments to reflect change in nomenclature; programs called "preschool" need to be changed to "4K" which includes all kindergarten classrooms for four year old children, taught by a certified teacher.
4. 43-259 Graduation Requirements. Amendments need to be made to this regulation because of a revised scoring scale that has been put into place by the American Council on Education to the portion dealing with the GED examination.
5. 43-280 Creating More Effective Partnerships Among the Schools, Parents, Community, and Business. Being repealed because requirements are covered in the Pathways to Prosperity and Act 402, "Parental Involvement in Their Children's Education Act."
6. NEW Regulations or guidelines will be developed to implement new aspects of the Charter Schools Act.
7. 43-600 Charter Schools Regulation, will be amended to incorporate changes in the Charter Schools Act.

Legislative review of these proposals will be required.

STATE BOARD OF EDUCATION

CHAPTER 43

Statutory Authority: S.C. Code Ann. Sections 59-5-60 (1990) and 59-5-65 (1990 and Supp. 2001)

Notice of Drafting:

The State Board of Education proposes to repeal or amend regulations to teacher grants, the defined program grades 9-12, comprehensive planning, accreditation criteria and deregulation.

Interested persons may submit comments to Dr. Leonard McIntyre, Deputy Superintendent, Division of Professional Development and School Quality, State Department of Education, 1429 Senate Street, Room 1102, Rutledge Building, Columbia, South Carolina 29201. To be considered, comments must be received no later than 5:00 p.m. on July 5, 2002, the close of the drafting comment period.

Synopsis:

The State Board of Education proposes to repeal or amend the following regulations.

1. 43-201.1 Teacher Grants. Amendments to reflect the current organization of the State Department of Education.
2. 43-234 Defined Program Grades 9-12. Amendments to add Mathematics for the Technologies 3 as a course required to be offered, to add the provision that students must be provided the opportunity

22 DRAFTING

- to take Physical Science before they take the Exit Examination, and to delete the reference to the STAR diploma.
3. 43-261 District & School Comprehensive Planning. Amendments to reflect the provisions of the South Carolina Education Accountability Act.
 4. 43-300 Accreditation Criteria. Amendments to include student academic performance in the criteria for accreditation.
 5. 43-303 Flexibility through Deregulation. Amendments to allow school flexibility through exemptions from statute and regulation under new criteria in accordance with the Education Accountability Act of 1998.

Legislative review of these proposals will be required.

STATE BOARD OF EDUCATION

Chapter 43

Statutory Authority: 1976 Code Sections 59-5-60 (1990), 59-5 65 (1990 and Supp. 2001) and 59-26-10, et al. al. (Supp. 2001)

Notice of Drafting:

The State Board of Education proposes to repeal or amend regulations governing Teacher Certification, Teacher Education Program Approval, and Teacher Evaluation. Interested persons may submit their comments in writing to Dr. Janice Poda, Senior Director, Office of Teacher Certification, 1600 Gervais Street, Columbia, South Carolina 29201. To be considered, all comments must be received no later than 5:00 p.m. on July 5, 2002, the close of the drafting comment period.

Synopsis:

The development of South Carolina Curriculum Standards; the direction of National Standards for Teacher Education; development of INTASC standards for initial teacher certification; enactment of the South Carolina Accountability Act; report from the Governor's Commission on Teacher Quality; and the work-related task forces create the need for restructuring the state system for training, certifying and evaluating teachers. The State Board of Education proposes to amend the following regulations:

1. 43-51 Requirements for Certification
2. 43.52 Application for Teaching Credential-Required Documentation
3. 43.53 Credential Classification
4. 43.57 Prior Work Experience
5. 43-130 Accreditation Standards Filed
6. 43-209 Nonprofessional Personnel Positions

Legislative review of these proposals will be required.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

CHAPTER 30

Statutory Authority: S.C. Code Section 48-39-10 *et seq.*

Notice of Drafting:

The Department of Health and Environmental Control proposes to amend the Coastal Division's R. 30-1, *Statement of Policy*, R.30-8, *Enforcement*, and R.30-12, *Specific Project Standards for Tidelands and Coastal Waters*. These regulations are part of the Coastal regulations for permitting in the critical areas of the Coastal

zone. Interested persons should submit their views in writing to Debra L. Hernandez, Office of Ocean and Coastal Resource Management, S.C. Department of Health and Environmental Control, 1362 McMillan Avenue, Suite 400, Charleston, S.C., 29405. To be considered, comments should be received no later than July 29, 2002, the close of the initial drafting comment period.

Synopsis:

The proposed regulatory changes will clarify language related to the permitting of docks and bulkheads. Additionally, language is being proposed to provide the Department more flexibility in determining appropriate penalties for violations of these regulations. The changes are proposed to address questions raised by permittees and interested parties regarding the administration of the regulations, and primarily reflect current administrative practice. Generally, additional language and modifications of existing language will make the Department's regulations more user-friendly and specific.

Amendments being considered include, but are not limited to, language to 1) clarify the recording of dock corridors on recordable plats, 2) correct a building code reference for handrails, 3) specify the structures included in the total allowable dock square footage calculation, 4) improve the language describing required water frontage for docks, including adding a definition for waterfront property, 5) clarify when bulkheads are permitted, and 6) specify additional penalty options for violations. Other amendments that would improve the Department's administration of the regulations for docks, bulkheads, and other activities in the critical area, including enforcement of these regulations, will be considered.

Legislative review will be required.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 30

Statutory Authority: S.C. Code Section 48-39-10 *et seq.* and
48-39-145 (Act 248, May 15, 2002)

Notice of Drafting:

The Department of Health and Environmental Control proposes to amend R.61-30, *Environmental Protection Fees*. Interested persons should submit their views in writing to Debra L. Hernandez, Office of Ocean and Coastal Resource Management, S.C. Department of Health and Environmental Control, 1362 McMillan Avenue, Suite 400, Charleston, S.C., 29405. To be considered, comments should be received no later than July 29, 2002, the close of the initial drafting comment period.

Synopsis:

Pursuant to Act 248, effective May 15, 2002, S.C. Code Section 48-39-145 was amended to raise the critical area permit application fees for minor activities which are non-commercial/non-industrial in nature and provide personal benefits that have no connection with a commercial/industrial enterprise. The proposed amendment will revise R.61-30.G.13 regarding the application fee for minor, private activities to bring the Coastal Zone Management Program fee schedule current for consistency with state law.

Legislative review will be required.

24 DRAFTING

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL CHAPTER 30

Statutory Authority: S.C. Code Section 48-39-10 *et seq.* and Act 198 (March 27, 2002)

Notice of Drafting:

The Department of Health and Environmental proposes to amend R. 30-1, *Statement of Policy*, R. 30-13, *Specific Project Standards for Beaches and the Beach/Dune System*, and R.30-15, *Activities Allowed Seaward of Baseline*. These are regulations related to permitting in the critical areas of the coastal zone. Interested persons should submit their views in writing to Debra L. Hernandez, Office of Ocean and Coastal Resource Management, S.C. Department of Health and Environmental Control, 1362 McMillan Avenue, Suite 400, Charleston, S.C., 29405. To be considered, comments should be received no later than July 29, 2002, the close of the initial drafting comment period.

Synopsis:

The Department proposes to amend Regulations 30-1, 30-13 and 30-15 pursuant to S.C. Code Section 48-39-10 *et seq.* and Act 198, effective March 27, 2002. The amendments will reflect changes to Section 48-39-290 relating to the permitting of groins seaward of the baseline. These changes will make the Department's regulations regarding the construction and refurbishment of groins on the State's beaches consistent with the current statutory authority to permit these activities.

Legislative review will be required.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL CHAPTER 30

Statutory Authority: S.C. Code Section 48-39-10 *et seq.*

Notice of Drafting:

The Department of Health and Environmental Control proposes to amend R. 30-15, *Activities Allowed Seaward of Baseline*, one of the Coastal Division's regulations related to permitting in the critical areas of the Coastal Zone. Interested persons should submit their views in writing to Debra L. Hernandez, Office of Ocean and Coastal Resource Management, S.C. Department of Health and Environmental Control, 1362 McMillan Avenue, Suite 400, Charleston, S.C., 29405. To be considered, comments should be received no later than July 29, 2002, the close of the initial drafting comment period.

Synopsis:

The proposed changes will clarify the Department's regulations regarding the construction of pools in areas seaward of the baseline along the State's beaches.

Legislative review will be required.

DEPARTMENT OF REVENUE

Chapter 117

Statutory Authority: 1976 Code Section 12-4-320

Notice of Drafting:

The South Carolina Department of Revenue is considering repealing SC Regulations 117-1, 117-2, 117-6 and 117-7 and creating three new regulations concerning administrative matters in a new Article 10. Under the proposal, administrative regulations are combined so that all regulations concerning one subject matter can be found in one regulation and therefore one place in the regulation code. In addition, each regulation would have several “subsections” numbered in a manner to allow future issues concerning the subject matter to be added on and still be in the same place in the regulation code as other similar issues. For example, all issues concerning recordkeeping can be found in one regulation under Regulation 117-200. This regulation has several “subsections” numbered 117-200.1, 117-200.2, and so on. This proposal organizes and numbers the regulations as follows:

| <u>Regulation Number</u> | <u>Subject</u> |
|--------------------------|---|
| 17-200 | Recordkeeping |
| 117-201 | Supplying of Identifying Numbers |
| 117-202 | Definitions, reimbursement for costs incurred in complying with summons |

The proposal also amends the provisions for retention of books and records to ensure such provisions apply to all laws administered by the Department.

Interested persons may submit written comments to Meredith F. Cleland, South Carolina Department of Revenue, Legislative Services, P.O. Box 125, Columbia, SC 29214. To be considered, comments must be received no later than 5:00 p.m. on, July 29, 2002.

Synopsis:

The South Carolina Department of Revenue is considering repealing SC Regulations 117-1, 117-2, 117-6 and 117-7 and creating three new regulations concerning administrative matters in a new Article 10. Under the proposal, administrative regulations are combined so that all regulations concerning one subject matter can be found in one regulation and therefore one place in the regulation code. In addition, each regulation would have several “subsections” numbered in a manner to allow future issues concerning the subject matter to be added on and still be in the same place in the regulation code as other similar issues. For example, all issues concerning recordkeeping can be found in one regulation under Regulation 117-200. This regulation has several “subsections” numbered 117-200.1, 117-200.2, and so on. The proposal also amends the provisions for retention of books and records to ensure such provisions apply to all laws administered by the Department.

DEPARTMENT OF REVENUE

Chapter 117

Statutory Authority: 1976 Code Section 12-4-320

Notice of Drafting:

The South Carolina Department of Revenue is considering repealing Articles 2, 3 and 4 of Chapter 117 and repealing SC Regulations 117-92.1, 117-92.2, 117-92.3, 117-92.5, 117-88.1, 117-88.2 and 117-88.3 and creating eight new regulations concerning various miscellaneous taxes in a new Article 14. Under the proposal, regulations are combined so that all regulations concerning one subject matter can be found in one regulation and therefore

26 DRAFTING

one place in the regulation code. In addition, each regulation would have several “subsections” numbered in a manner to allow future issues concerning the subject matter to be added on and still be in the same place in the regulation code as other similar issues. For example, all issues concerning alcoholic liquor taxes can be found in one regulation under Regulation 117-1200. This regulation has several “subsections” numbered 117-1200.1, 117-1200.2, and so on. This proposal organizes and numbers the regulations as follows:

| <u>Regulation Number</u> | <u>Subject</u> |
|--------------------------|-----------------------------------|
| 117-1200 | Alcoholic Liquor Taxes |
| 117-1250 | Beer and Wine Taxes |
| 117-1300 | Coin-operated Devices |
| 117-1350 | Deed Recording Fee |
| 117-1400 | Electric Power Tax |
| 117-1450 | Motor Fuel Tax |
| 117-1500 | Bank Tax |
| 117-1550 | Building and Loan Association Tax |

Interested persons may submit written comments to Meredith F. Cleland, South Carolina Department of Revenue, Legislative Services, P.O. Box 125, Columbia, SC 29214. To be considered, comments must be received no later than 5:00 p.m. on, July 29, 2002.

Synopsis:

The South Carolina Department of Revenue is considering repealing Articles 2, 3 and 4 of Chapter 117 and repealing SC Regulations 117-92.1, 117-92.2, 117-92.3, 117-92.5, 117-88.1, 117-88.2 and 117-88.3 and creating eight new regulations concerning various miscellaneous taxes in a new Article 14. Under the proposal, regulations are combined so that all regulations concerning one subject matter can be found in one regulation and therefore one place in the regulation code. In addition, each regulation would have several “subsections” numbered in a manner to allow future issues concerning the subject matter to be added on and still be in the same place in the regulation code as other similar issues. For example, all issues concerning alcoholic liquor taxes can be found in one regulation under Regulation 117-1200. This regulation has several “subsections” numbered 117-1200.1, 117-1200.2, and so on.

Document No. 2744

STATE BOARD OF EDUCATION

CHAPTER 43

Statutory Authority: S.C. Code Ann. Sections 59-5-60 (1990), 59-5-65 (1990 and Supp. 2001), and 59-18-30 (Supp. 2001)

Preamble:

The State Board of Education proposes the repeal in its entirety of Regulation 43-301, Intervention Where Quality of Education in a Local School District Is Impaired. The regulation is no longer needed because the Education Accountability Act contains the details of a new system of intervention.

The Notice of Drafting was published in the *State Register* on May 24, 2002.

Section-by-Section Discussion

Section I sets minimum criteria standards for determining if a district is designated as highest priority for technical assistance. Section II relates to the application of the minimum criteria standards. Section III provides for notification to school districts of the results of the application of the standards. Section IV requires highest priority districts to provide information in a timely manner. Section V relates to the review committee recommendations. Section VI discusses implementation of the recommendations, and Section VII speaks to non-implementation of the recommendations. Section VIII discusses technical assistance available to districts not designated as highest priority but not meeting all standards. It is proposed that the regulation be repealed in its entirety.

Notice of Public Hearing and Opportunity for Public Comment:

Interested members of the public and regulated community are invited to make oral or written comments on the proposed regulation at a public hearing to be conducted by the State Board of Education at its meeting on August 13, 2002, at 10:00 A.M. at the Rutledge Building, State Department of Education, Columbia, South Carolina. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes or less, and as a courtesy are asked to provide written copies of their presentation for the record.

Interested persons are also provided an opportunity to submit written comments on the proposed amendments by writing to Dr. Leonard McIntyre, Deputy Superintendent, Division of Professional Development and School Quality, 1429 Senate Street, Room 1102, Columbia, South Carolina 29201 or e-mail Lmcintyr@sde.state.sc.us. Comments must be received no later than 5:00 P.M. on July 29, 2002. Comments received by the deadline shall be submitted to the Board in a summary of public comments and department responses for consideration at the public hearing.

Preliminary Fiscal Impact Statement: The repeal of the regulation will create no additional costs to the State or its political subdivisions.

Statement of Need and Reasonableness:

DESCRIPTION OF REGULATION: 43-301, Intervention Where Quality of Education in a Local School District Is Impaired

Purpose: It is proposed that Regulation 43-301, Intervention Where Quality of Education in a Local School District Is Impaired, be repealed in its entirety. The Education Accountability Act of 1998 repealed S.C. Code Ann. Section 59-18-30 (Supp. 2001) related to intervention in impaired school districts. The Accountability Act provides the specifics of a system of intervention based on school report card ratings. Regulation 43-301 deals with intervention in impaired districts and is no longer needed.

28 PROPOSED REGULATIONS

Legal Authority: The legal authority for Regulation 43-301 is Sections 59-5-60 (1990), 59-5-65 (1990 and Supp. 2001), and 59-18-30 (Supp. 2001).

Plan for Implementation: The proposed repeal will be posted on the State Department of Education's Web site for review and comment. The repeal will take effect upon approval by the General Assembly and publication in the *State Register*.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORES HEREIN AND EXPECTED BENEFITS: The regulation is no longer needed because the Education Accountability Act contains the details of a new system of intervention.

DETERMINATION OF COSTS AND BENEFITS N/A

UNCERTAINTIES OF ESTIMATES N/A

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: None

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

Statement of Rationale:

S.C. Code Ann. Section 59-18-30 (Supp. 2001) related to intervention in impaired school districts was repealed by the Education Accountability Act of 1998. The Act provides the specifics of a new system of intervention based on school report card ratings. 24 S.C. Code Ann. Regs. 43-301 (Supp. 2001) deals with intervention in impaired districts and is no longer needed.

Text:

The full text of this regulation is available on the South Carolina General Assembly Home Page: <http://www.scstatehouse.net/regnsrch.htm> If you do not have access to the Internet, the text may be obtained from the promulgating agency.

Document No. 2743

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61

Statutory Authority: 1976 Code Section 48-1-10 et seq.

R.61-69, *Classified Waters*

Preamble:

Section 303(c) of the Federal Clean Water Act (CWA) requires that South Carolina establish water quality standards that are sufficiently protective to maintain the existing and classified uses of all waters of the State. The Department recently was asked to evaluate that a site-specific standard for dissolved oxygen (DO) currently established for the Saluda River (Main Stem) from the Lake Murray Dam to the confluence with the Broad River, which is classified as Trout Put, Grow, and Take (TPGT), is not supporting the established use. In accordance with both State and Federal statutory and regulatory requirements, State water quality standards must be established using scientifically-defensible data and information and must provide for the protection and maintenance of the established beneficial uses of the waters of the State. Since the Department has no rationale to sustain the site specific dissolved oxygen standard for the Saluda River, the Department proposes to allow the

scientifically-defensible dissolved oxygen standard for the class of TPGT to become the standard for the waterbody.

There are also tributaries associated with this waterbody that are unnamed in R.61-69 and, by default, may have assumed the TPGT classification (excluding the site-specific standard). These waters do not support trout species and the Department proposes to retain the appropriate classification of Freshwaters for these tributaries and to list them separately in R.61-69.

Discussion of Revisions:

| <u>SECTION</u> | <u>REVISION</u> |
|----------------|--|
| R.61-69 | Remove the site-specific water quality standard from the main stem of the Saluda River from the Lake Murray Dam to the confluence with the Broad River. |
| R.61-69 | Retain the classification of Freshwaters for all tributaries of the main stem of the Saluda River from the Lake Murray Dam to the confluence with the Broad River. |

Notice of Staff Informational Forum:

Staff of the Department of Health and Environmental Control invite members of the public and regulated community to attend a staff-conducted informational forum to be held on July 15, 2002 at 2:00 p.m. in Peoples Auditorium, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina. The purpose of the forum is to answer questions, clarify the issues, and receive comments from interested parties on the proposed amendment to the regulation. Due to admittance procedures at the DHEC Building, all visitors must enter through the Bull Street Entrance and register at the front desk. Comments received shall be considered by staff in formulating the final draft proposal for submission to the Board of Health and Environmental Control for the Board public hearing scheduled for September 12, 2002 as noticed below.

Interested parties are also provided an opportunity to submit written comments to the staff forum by writing to Gina L. Kirkland at Bureau of Water, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina, 29201, fax number (803) 898-4140. To be considered, written comments submitted must be received no later than 5:00 p.m. on July 29, 2002. Comments received shall be submitted in a Summary of Public Comments and Department Responses for the Board's consideration at the public hearing as noticed below.

Copies of the text of the proposed amendment to the regulation for public notice and comment may be obtained by contacting Gina L. Kirkland at Bureau of Water, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina, 29201, telephone number (803) 898-4250, email address kirklagl@dhec.state.sc.us, fax number (803) 898-4140, or from the Department s webs <http://www.state.sc.us/dhec/eqc/>

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

Interested members of the public and regulated community are invited to make oral and written comments on the proposed amendment to the regulation at a public hearing to be conducted by the Board of Health and Environmental Control at its regularly-scheduled meeting on September 12, 2002. The public hearing will be held in the Board Room of the Commissioner's Suite, Third Floor, Aycock Building of the Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina. The Board meeting commences at 10:00 a.m. at which time the Board will consider items on its agenda in order presented. The order of presentation for public hearings will be noticed in the Board's agenda to be published by the Department ten days in advance of

30 PROPOSED REGULATIONS

the meeting. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes and, as a courtesy, are asked to provide written copies of their presentation for the record. Due to admittance procedures at the DHEC Building, all visitors must enter through the Bull Street Entrance and register at the front desk.

Interested parties are also provided an opportunity to submit written comments on the proposed amendment to the regulation by writing to Gina L. Kirkland at Bureau of Water, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina, 29201. To be considered, written comments submitted must be received no later than 5:00 pm on July 29, 2002. Comments received shall be submitted in a Summary of Public Comments and Department Responses for the Board's consideration at the public hearing as noticed above.

Copies of the final proposed regulation for public hearing may be obtained by contacting Gina L. Kirkland at Bureau of Water, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina, 29201, telephone number (803) 898-4250, email address kirklagl@dhec.state.sc.us, fax number (803) 898-4140, or from the Department website at <http://www.state.sc.us/dhe>

Preliminary Fiscal Impact Statement:

No costs to the State or significant cost to its political subdivisions as a whole should be incurred by these amendments. See Statement of Need and Reasonableness below.

Statement of Need and Reasonableness:

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

DESCRIPTION OF REGULATION: Amendment of Regulation 61-69, *Classified Waters*.

Purpose: Proposed amendment of R.61-69 will remove the site-specific standard for dissolved oxygen (DO) in the main stem of the Saluda River in order to protect sensitive trout populations and make the water quality standard consistent with Section 303(c) of the Federal Clean Water Act.

Legal Authority: S.C. Code Sections 48-1-40, 48-1-60, and 48-1-80, implementing the Clean Water Act.

Plan for Implementation: The proposed amendment would be incorporated within R.61-69 upon approval of the Board of Health and Environmental Control and the General Assembly and publication in the State Register. The proposed amendment will be implemented in the same manner in which the present regulation is implemented.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFIT: This amendment is required to comply with Federal requirements of Section 303(c) of the Clean Water Act.

In accordance with both State and Federal statutory and regulatory requirements, State water quality standards must be established using scientifically-defensible data and information and must provide for the protection and maintenance of the established beneficial uses of the waters of the State.

The main stem of the Saluda River from the Lake Murray Dam to the confluence with the Broad River is currently classified as Trout Put, Grow, and Take (TPGT). Although South Carolina Regulation 61-68, *Water Classifications and Standards*, currently establishes a dissolved oxygen standard of a minimum of 6.0 mg/l (R.61-68.G.9.e) for TPGT waters, R.61-69 currently establishes a site-specific standard for DO of a daily average of not less than 5.0 mg/l with no minimum requirement. DHEC received a request to reclassify the main stem of the Saluda River to delete the site-specific standard and make the default TPGT dissolved oxygen standard applicable.

Numeric aquatic life criteria are expressed as short-term (acute) and long-term (chronic) concentrations in order that the criteria provide protection against lethality and sublethal effects in waters of the State. It is the combination of the two criteria that provides protection of aquatic life and sustains the aquatic life uses. Minimum DO criteria prevent acutely toxic conditions instream (hypoxia), but also provide for longer-term metabolic and systemic protection of aquatic life. The minimum is crucial to the survival of all species and is necessary to ensure that both lethal and nonlethal effects do not occur instream. Trout populations are exceptionally sensitive to DO and scientifically-defensible data (i.e., EPA's Ambient Water Quality Criteria for Dissolved Oxygen, EPA 440/5-86-003) clearly demonstrate that trout species must have higher DO levels in order to survive.

DETERMINATION OF COSTS AND BENEFITS: Existing staff and resources will be utilized to implement this amendment to the regulation. No additional cost will be incurred by the State if the revisions are implemented and therefore, no additional state funding is being requested.

UNCERTAINTIES OF ESTIMATES: Minimal.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: Implementation of this amendment will not compromise the protection of the environment or the health and safety of the citizenry of the State. The amendment will promote and protect sensitive trout populations as well as other resident freshwater aquatic life by the regulation of minimum DO levels in this water of the State.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED: Failure by the Department to incorporate this revision will result in instream consequences for trout species in the Saluda River. This section of the Saluda River is used extensively by the public as a recreationally-significant water where anglers are aware of the stocking of trout species by the South Carolina Department of Natural Resources and regularly fish for trout and bass in this area. The lower DO levels can cause fishkills and impair growth of trout species which are significant and costly impairments to these stocked populations.

Statement of Rationale:

The statement of rationale was determined by staff analysis pursuant to S.C. Code Section 1-23-110(A)(3)(h).

This amendment will remove a site-specific standard for dissolved oxygen on the main stem of the Saluda River. Since the Department has no rationale to sustain the site specific dissolved oxygen standard for the Saluda River, the Department proposes to allow the scientifically-defensible dissolved oxygen standard (i.e., EPA's Ambient Water Quality Criteria for Dissolved Oxygen, EPA 440/5-86-003) for the class of TPGT to become the standard for the waterbody. See Statement of Need and Reasonableness above.

32 PROPOSED REGULATIONS

Text of Proposed Amendment for Public Notice and Comment:

R.61-69, *Classified Waters*

| Waterbody Name | Counties | Class | Waterbody Description and (Site Specific Standard) |
|---|-----------------|--------------|--|
| SALUDA RIVER (MAIN STEM) | Lxtn, Rlnd | TPGT | That portion from the Lake Murray Dam to the confluence with the Broad River |
| UNNAMED TRIBUTARIES SALUDA RIVER (MAIN STEM) | Lxtn, Rlnd | FW | All tributaries to the main stem of the Saluda River from the Lake Murray Dam To the confluence with the Broad River |

Document No. 2668

DEPARTMENT OF ARCHIVES AND HISTORY**CHAPTER 12**

Statutory Authority: 1976 Code Section 30-1-90(B)

12-400 through 12-423 General Retention Schedule for State Personnel Records

Synopsis:

The General Assembly approved Regulation 12-400 through 12-423 (General Retention Schedule for State Personnel Records) on June 26, 1992. The amendments will simplify the disposition process for state agencies; amend sections concerning records which require better description; and repeal sections concerning records which are no longer created.

12-400 Introduction and general matters; application of schedule.

New text indicates the general schedule covers information on all types of media. This additional wording is consistent with the definition of public records in the Freedom of Information Act (Section 30-4-20C) and the Public Records Act (Section 30-1-10A). Also, the process state agencies will use to destroy records through use of the general schedule is being simplified. Agencies will no longer be required to submit a request to use the general schedule form to the Department and have it reviewed and approved before being authorized to use the schedule to destroy their records. The new process will allow state agencies to use the schedule and report destruction to the Department after records are destroyed. This new process for using the general schedule will be the same process state agencies currently use when implementing schedules approved specifically for their agency. This change will allow agencies to use one form to report destruction through use of both general and specific schedules.

12-401 through 12-404 Reserved for future use is being revised to add 12-405 since 12-405 is being deleted as a separate section.

12-405 Certification Lists is being deleted since this series is no longer being generated.

12-406. The description is being changed to clarify the retention of the record copy of this series through the Employment Security Commission.

12-411. Spelling error is being corrected in series title. The description is being changed to clarify the basis for retention of these records through the State Budget and Control Board's Office of Human Resources.

12-413. The description is being changed to clarify the basis for retention of these records through the State Budget and Control Board's Office of Human Resources.

12-418. The description is being changed to clarify the basis for retention of these records through the State Budget and Control Board's Office of Human Resources.

12-422. The description is being changed to clarify the basis for the permanent retention of these records through the State Human Affairs Commission.

12-423. The description is being changed to make it more accurate.

Instructions:

Delete existing 12-400 and add new 12-400.

Add 12-405 to section reserved for future use.

34 FINAL REGULATIONS

Delete existing 12-405.

Delete existing 12-406 and add new 12-406.

Delete existing 12-411 and add new 12-411.

Delete existing 12-413 and add new 12-413.

Delete existing 12-418 and add new 12-418.

Delete existing 12-422 and add new 12-422.

Delete existing 12-423 and add new 12-423.

Text:

12-400 Introduction and general matters; application of schedule.

The following general records retention schedule contains minimum retention periods for the official copy of the agency's records. These retentions and dispositions apply regardless of physical format, i.e., paper, microfilm, electronic storage, digital imaging, etc. Convenience, informational or duplicate copies are not governed by this regulation and may be destroyed when no longer needed for reference. To destroy records in accordance with this regulation, state agencies must complete and submit a report of records destroyed form to the State Archives after eligible records have been destroyed. These forms are available from the Department's Division of Archives and Records Management. State agencies must also contact the State Archives to transfer permanent records to the State Archives for archival retention. Before disposing of public records under this general schedule, state agencies are responsible for ensuring that records are no longer required for federal or state audits, for legal purposes, for litigation, for fiscal information, and/or for any other action. This general schedule supersedes all schedules approved previously for the same records series. However, state agencies may opt out of this general schedule, and request the continuing use of existing schedules or the establishment of specific retention schedules for their records when appropriate, necessary or in order to avoid conflict with other laws and regulations.

12-401 through 12-405 (Reserved for future use).

12-406 Employer Status Reports (Unemployment Compensation)

A. Description: Reports from an individual agency to the Employment Security Commission which are used by the Employment Security Commission to determine the liability or non-liability of agency for payment of unemployment compensation. Information includes the Employer Status Report, Notice of Liability sent to the agency from the Employment Security Commission, Notice of Contribution for the next calendar year, and related memoranda and correspondence concerning changes in agency unemployment compensation accounts and liability. The record copy of this series is scheduled by the State Archives through the Employment Security Commission.

B. Retention: 6 years; destroy.

12-411 Grievance Files

A. Description: Document grievance proceedings initiated by state employees. Information includes copies of each grievant's original grievance filing, copies of the decisions rendered at each level of the grievance procedure, copies of the grievance and appeal procedures for the agency and for all state employees, and copies of the final decision rendered by the State Employee's Grievance Committee. Portions of this series are scheduled by the State Archives through the State Budget and Control Board's Office of Human Resources.

B. Retention: 10 years after resolution of all grievance issues; destroy

12-413 Job Classifications

A. Description: A listing of all job positions classified by the Office of Human Resources. Information includes position qualifications, pay grades, and duties for positions in state service. The record copy of this series is scheduled by the State Archives through the State Budget and Control Board's Office of Human Resources.

B. Retention: Until termination of position; destroy.

12-418 Personnel Policies and Procedures

A. Description: Policies and procedures issued by the agency or the State Budget and Control Board's Office of Human Resources. Information includes employment application policy, classification and compensation plan, explanation of performance appraisal system, reduction in force procedures, grievance policies, equal employment opportunity guidelines, termination procedure, workmen's compensation plan, and other procedures issued by an agency, and/or the Office of Human Resources. Portions of this series are scheduled for permanent retention by the State Archives through the State Budget and Control Board's Office of Human Resources.

B. Retention:

- (1) Agency: Until no longer needed for reference.
- (2) State Archives: Selection of needed documentation. Permanent.

12-422 Affirmative Action Plans and Progress Reports

A. Description: Affirmative Action Plans prepared by state agencies and Progress Reports used by the State Human Affairs Commission to monitor the implementation of these plans. Affirmative Action Plans reflect an agency's projected policies, procedures, and practices to achieve the goal of a non-discriminatory employment system. Also included are statistics, analysis of the current and projected work force composition by race, sex, and comments. The semi-annual Progress Reports consist of updated employment data analysis by race and sex, a summary of personnel actions which reflect a breakdown of agency positions by race, sex, analysis, and comments. Also included is correspondence concerning the Affirmative Action Plans and their implementation. Portions of this series are scheduled for permanent retention by the State Archives through the State Human Affairs Commission.

B. Retention: 3years; destroy.

12-423 Log and Summary of Occupational Injuries and Illnesses

A. Description: Record of work related injuries, illnesses, and deaths. Information includes case or file number, date of injury or onset of illness, employee's name, occupation, department, description of injury, or illness, fatalities, non-fatal injuries, injuries with lost workdays, injuries without lost workdays, and other related information.

B. Retention: 5 years following the end of the calendar year to which they relate; destroy.

Fiscal Impact Statement:

The Department of Archives and History estimates that there will be no additional costs incurred by the State or its political subdivisions.

36 FINAL REGULATIONS

Resubmitted May 8, 2002

Document No. 2684
STATE BOARD OF EDUCATION
CHAPTER 43
Statutory Authority: S.C. Code Section(s) 59-5-60 (1990)

43-55. Renewal of Credentials

Synopsis:

The Department proposes to amend 24 S.C. Code Ann. Regs. 43-55, Renewal of Credentials, as indicated in the Drafting Notice of July 27, 2001. The proposed regulation will clarify requirements for those individuals seeking renewal of an educator's professional certificate in South Carolina.

1. The proposed amendments include language defining educators for the purposes of this regulation;
2. The proposed amendments include language that defines an active and inactive certificate for the purposes of certificate renewal and how to change from the inactive to active status;
3. The proposed amendments include language connecting certificate renewal to an educator's professional development plan, established goals, and student learning;
4. The proposed amendments establish four options for certificate renewal;
5. The proposed amendments eliminate the restriction on the use of continuing education units (CEUs) for certificate renewal;
6. The proposed amendments insert language that refers to renewal credits approved by the State Board of Education;
7. The proposed amendments insert language for the development of policies and procedures for the State Department of Education's certification renewal courses;
8. The proposed amendments eliminate language requiring educators to designate five areas of primary certification; and
9. The proposed amendments require a minimum of three semester hours of college coursework to renew a certificate for educators who do not have a master's degree.

Section-by-Section Discussion

1. In R 43-55, Section A., new text is inserted that defines educator for the purposes of this regulation.
2. In R 43-55, Section B., new text is inserted that defines active and inactive status for the purpose of certificate renewal and explains how to change from inactive to active status.
3. In R 43-55, Section C., existing text is edited to clarify the renewal period.
4. In R 43-55, Section D.(2), new text is inserted to require one hundred twenty renewal credits and allow a combination of options for certificate renewal.
5. In R 43-55, Section D.(2)(a)(c), new language is inserted that defines one semester hour as equal to twenty renewal credits.
6. In R 43-55, Section D.(2)(d), new language is inserted that defines one renewal credit as equal to one hour of participation.
7. In R 43-55, Section E., new language is inserted that requires three semester hours of college credit for renewal if the individual does not have a master's degree.

8. In R 43-55, Section F., credit earned through college courses, State Department of Education in-service credit or district-renewal points in state identified areas of critical need may be applied toward certificate renewal.
9. In R 43-55, Section G., college credit earned at a regionally, national, or state accredited college or university may be applied toward certification renewal.
10. In R 43-55, Section H.(1)(2)(3), discusses how the district renewal point system credit shall be earned and awarded. The credit will be reciprocated from one State Board of Education approved district renewal plan to another. New text is added to refer to the approval of renewal credits by the State Board of Education.
11. In R 43-55, Section I.(1)(2)(3), discusses how the State Department of Education approved certificate course or renewal credit shall be earned and awarded.
12. In R 43-55, Section J.(1)(2)(3), new language is inserted that identifies professional development renewal credits.
13. In R 43-55, (8), language is deleted relating to the restriction on the use of continuing education units (CEUs) for certificate renewal.
14. In R 43-55, (9), language is deleted relating to renewal credits.
15. In R 43-55, Section M., deleted new language exempting National Board Certified Educators from meeting the renewal requirements for the life of their National Board certification.

Instructions: Replace in its entirety Regulation 24 S.C. Code Ann. Regs. 43-55 (Supp. 2000), Renewal of Credentials, which is under Chapter 43, Article 3, with the following amended text.

Text:

43-55. Renewal of Credentials

A. For the purposes of this regulation an educator is defined as any person who holds a South Carolina educator's certificate.

B. An educator's professional certificate is valid for five years and expires on June 30 of the expiration year.

(1) An educator's professional certificate is renewed in the active status when an individual is-employed by an educational entity that requires educator certification. An educator in the active status must earn renewal credits that promote the professional growth of an educator and directly relate to the professional development plan, established goals, or impact student learning as required by Regulation 43-205.1. Assisting, Developing, and Evaluating Professional Teaching (ADEPT) and/or Regulation 165.1. Program for Assisting, Developing, and Evaluating Principal Performance(ADEPP).

(2) An educator's professional certificate is renewed in the inactive status when an individual is not employed by an educational entity that requires educator certification. An educator's professional certificate is renewed in the inactive status when the individual earns six semester hours of state or regional accredited college or university transcript credit. An educator automatically moves from the inactive status to the active status with verification that he or she is employed by an educational entity that requires educator certification.

C. The total number of years an individual has held any type of temporary credential issued by South Carolina will be deducted from the normal five-year period of the professional certificate at the time of issue.

D. To renew a professional certificate, an applicant shall:

38 FINAL REGULATIONS

(1) Submit a written request to have the credential renewed and pay any required fee for credential renewal to the Office of Teacher-Certification.

(2) Submit documentation of having met State Board of Education requirements for certificate renewal for 120 renewal credits earned in a certification area during the certificate's five-year validity period. The renewal credits must be from one or any combination of the following:

a. six semester hours (one semester hour is equal to 20 renewal credits) of state or regional accredited college or university transcript credit;

b. 120 district professional development points earned through an approved district certificate renewal plan;

c. six semester hours (one semester hour is equal to 20 renewal credits) of State Department of Education approved renewal credit; or

d. 120 renewal credits (one credit is equal to one hour of direct participation) approved by the State Board of Education.

E. Of the required renewal credits, sixty credits (three semester hours of college credit) must be earned from a regional, accredited university for those educators without a master's degree.

F. Credit earned through college courses, State Department of Education in-service credit, or district-renewal points in state identified areas of critical need may be applied toward certificate renewal.

G. College-or university transcript credit earned for certification renewal shall:

1. be earned through a nationally or regionally accredited college or university or through a college or university which has programs approved for teacher education by the State Board of Education,

2. be submitted via official transcript to the Office of Teacher Certification.

3. be computed in semester hours.

H. District professional development point system credit shall:

1. be earned within a district certificate professional development point plan which is approved under State Board of Education criteria;

2. be awarded at the maximum rate of one point for one hour of direct individual participation, and

3. be reciprocal from one State Board of Education approved district professional development plan to another.

I. State Department of Education approved renewal credit shall:

1. be earned within a planned course of instruction approved for renewal under the State Board of Education requirements,

2. be awarded on the basis of one certificate renewal hour of credit for each fifteen (15) hours of direct instruction, and

3. follow the policies and procedures for State Department of Education Certification Renewal Courses.

J. Professional development renewal credits approved by the State Board of Education shall:

1. be earned through direct participation in a professional development activity contained within the South Carolina Board of Education Guidelines,

2. be awarded on the basis of one certificate renewal hour of credit for each hour of direct participation in a professional development activity, and

3. Follow the policies and procedures for the State Department of Education Professional Development renewal credits.

K. Credit will not be allowed for a renewal activity that is repeated unless the activity has received prior approval in writing from the Director of the Office of Teacher Certification.

L. Regulations governing effective dates of renewed certificates shall be the same as those for initial and revised certificates.

Fiscal Impact Statement: N/A

Resubmitted April 10, 2002

Document No. 2682
STATE BOARD OF EDUCATION
CHAPTER 43

Statutory Authority: S.C Code Ann. Section 59-5-60 (1990)

43-64. Requirements for Initial Certification at the Advanced Level

Synopsis:

The Department proposes to amend 24 S.C. Code Ann. Regs 43-64, Requirements for Initial Certification at the Advanced Level, as indicated in the Drafting Notice of July 27, 2001. The proposed amendments clarify requirements for those individuals seeking an educators certificate in South Carolina.

1. The proposed amendment will include supervisor as one of the prerequisite certification areas listed under requirements for administrator, school superintendent, and vocational director,

2. The proposed amendment will include reference to a degree earned from a regionally or nationally accredited teacher education program or teacher education program approved by the State Board of Education, and

3. The proposed amendment will change the name of the certification area speech correctionist to speech-language therapist.

4. The proposed amendment will add media specialists to the regulation.

5. The proposed amendment will delete language that is repetitious and unnecessary.

Section-by-Section Discussion

1. In R 43-64, Sections A.(3)(a)(4)(a)(5)(a)(b), new text is added to include supervisor as one of the prerequisite certification areas listed under requirements for administrator, school superintendent, and vocational director.

2. In R 43-64, Section A.(3)(g)(h)(j)(k), text is deleted to eliminate repetition.

3. In R 43-64, Section A.(4)(g)(h)(j), text is deleted to eliminate repetition.

40 FINAL REGULATIONS

4. In R 43-64, Section C.(1)(a)(2)(a)(3)(a), new text is added to include the requirement that earned degrees are from a regionally or nationally accredited college or university with an advanced program for the preparation of school psychologists or an advanced school psychologist program approved by the State Board of Education.

5. In R 43-64, Section D., new text is added to change the name of the certification area speech correctionist to speech-language therapist.

6. In R 43-64, Section D.(1), new text is added to include the requirement that an earned master's degree is from a regionally, nationally, or state accredited college or university with a preparation program for speech-language therapists.

In R 43-64, Section D.(2), text is deleted to eliminate repetition.

In R 43-64, Section E., text is added to include media specialists.

In R 43-64, Section F is added to allow individuals to retain certification in expired or deleted areas.

Instructions: Replace in its entirety, the text of Regulation 64, Requirements for Initial Certification at the Advanced Level, which is under Chapter 43, Article 3, Requirements for Teacher Education and Certification Regulations, with the following amended text.

Text:

43-64. Requirements for Initial Certification at the Advanced Level.

A. ADMINISTRATION

(1) Elementary School Principal and Supervisor

(a) Have a valid South Carolina Educator's Professional Certificate at the elementary level.

(b) Submit a minimum qualifying score on the approved area administrator's examination adopted by the State Board of Education for use in South Carolina.

(c) Submit evidence of three years of teaching experience including at least one year of teaching in grades K–8.

(d) Complete an advanced program approved for the training of elementary principals and supervisors.

(2) Secondary School Principal and Supervisor

(a) Have a valid South Carolina Educator's Professional Certificate at the secondary level.

(b) Submit a minimum qualifying score on the approved area administrator's examination adopted by the State Board of Education for use in South Carolina.

(c) Submit evidence of three years of teaching experience including at least one year of teaching in grades 7–12.

(d) Complete an advanced program approved for the training of secondary principals and supervisors.

(3) Administrator

(a) Have a valid South Carolina principal, supervisor, or teacher certificate.

(b) Submit a minimum qualifying score on the approved area administrator examination adopted by the State Board of Education for use in South Carolina.

(c) Submit evidence of five years experience as a pre K–12 or post secondary teacher, school or school district administrator, post secondary administrator or school business administrator.

(d) Complete an advanced program approved for the training of superintendents.

OR

(e) Have earned a master's degree from a regionally or nationally accredited teacher education program or a teacher education program approved by the State Board of Education in a certification area.

(f) Earn fifteen semester hours ~~of~~ in administration in the areas listed below:

General School Administration
School Personnel Administration
Techniques of Supervision
School Law
School Finance
Curriculum Development

OR

(g) Have a valid out-of-state administrator, principal, supervisor, or other educational leadership certificate.

(4) School Superintendent

(a) Have a valid South Carolina principal, supervisor, or teacher Professional Certificate.

(b) Submit a minimum qualifying score on the approved area administrator's examination adopted by the State Board of Education for use in South Carolina.

(c) Submit evidence of a total of three years experience as a preK–12 or post secondary teacher and two years as a school or school district administrator, post secondary administrator, or school business administrator.

(d) Complete an advanced program approved for the training of school superintendents.

OR

(e) Have earned a master's degree from a regionally or nationally accredited teacher education program or a teacher education program approved by the State Board of Education in a certification area.

(f) Earn fifteen semester hours in administration in the areas listed below:

General School Administration
School Personnel Administration
Techniques of Supervision
School Law
School Finance
Curriculum Development

OR

42 FINAL REGULATIONS

(g) Have a valid out-of-state administrator, principal, supervisor or other educational leadership certificate.

(h) Submit evidence of five years of experience as a Director or Assistant Superintendent in a school district.

(5) Vocational/Technology/Career Center Director

(a) Have a valid secondary principal or supervisor certificate and certification in one of the following areas:

Agriculture
Family and Consumer Sciences
Health Occupations
Industrial Technology Education
Business and Marketing Education
Trade and Industrial Education
OR

(b) Have a valid secondary principal or supervisor certificate and have three years of experience as a Director or as an Assistant Director in a Vocational/Technology/Career Center.
OR

(c) Have earned a master's degree from a regionally or nationally accredited teacher education program or a teacher education program approved by the State Board of Education in vocational education, including fifteen semester hours in administration and certification in one of the following areas:

Agriculture
Family and Consumer Sciences
Health Occupations
Industrial Technology Education
Business and Marketing Education
Trade and Industrial Education

The fifteen semester hours in administration required above are to be selected from the areas listed below:

General School Administration
School Personnel Administration
Techniques of Supervision
School Law
School Finance
Human Growth and Development
Curriculum Development
AND

(d) Submit a minimum qualifying score on the approved area administrator's examination adopted by the State Board of Education for use in South Carolina.

(e) Submit evidence of five years experience as a pre K–12 or post secondary teacher, school or school district administrator, post secondary administrator, or business administrator.

B. ELEMENTARY AND SECONDARY GUIDANCE

(1) Have earned a master's degree from a regionally or nationally accredited college or university with an advanced program for the preparation of school counselor education or an advanced school counselor program approved by the State Board of Education.

(2) Submit a qualifying score on the State Board of Education required examination.

C. SCHOOL PSYCHOLOGIST

(1) SCHOOL PSYCHOLOGIST I

(a) Have earned a master's degree from a regionally or nationally accredited college or university with an advanced program for the preparation of school psychologists or an advanced school psychologist program approved by the State Board of Education.

(b) Submit a qualifying score on the State Board of Education required examination.

(2) SCHOOL PSYCHOLOGIST II

(a) Have earned a specialist degree from a regionally or nationally accredited college or university with an advanced program for the preparation of school psychologists or an advanced school psychologist program approved by the State Board of Education.

(b) Submit a qualifying score on the State Board of Education required examination.

(3) SCHOOL PSYCHOLOGIST III

(a) Have earned a doctorate degree from a regionally or nationally accredited college or university with an advanced program for the preparation of school psychologists or an advanced school psychologist program approved by the State Board of Education.

(b) Submit a qualifying score on the State Board of Education required examination.

(c) Complete an advanced program approved for the training of school psychologists.

D. SPEECH-LANGUAGE THERAPIST

(1) Have earned a master's degree from a regionally or nationally accredited college or university with an advanced program for the preparation of speech-language therapists or an advanced program for speech-language therapists approved by the State Board of Education.

(2) Submit a qualifying score on the State Board of Education required examination.

E. MEDIA SPECIALIST

(1) Have earned a master's degree from a regionally or nationally accredited college or university with an advanced program for the preparation of media specialists or school library media specialists or an advanced program for media specialists or school library media specialists approved by the State Board of Education.

(2) Submit a qualifying score on the State Board of Education required examination.

F. CERTIFICATION AREAS THAT ARE EXPIRED OR DELETED

44 FINAL REGULATIONS

(1) Educators who have a valid South Carolina Educator's Professional Certificate in an area that expires or is deleted during the time the certificate is valid may retain the certificate in the expired or deleted area provided the educator continues to meet the appropriate renewal requirements as determined by the State Department of Education.

Preliminary Fiscal Impact Statement: N/A

Document No. 2679
STATE BOARD OF EDUCATION
CHAPTER 43

Statutory Authority: S.C. Code Ann. Sections 59-5-60 (3)(6) (1990), and 59-39-100 (Supp. 2000)

R43-240. Summer Programs

Synopsis:

The State Board of Education proposes to amend Regulation 24 S.C. Code Ann. Regs. 43-240, Summer Programs. The Regulation provides for the organization and administration of summer school programs and identifies summer programs that are governed by this regulation. The proposed amendments clarify summer school programs governed by the regulation, provide appropriate certification to administer the programs, and remove the maximum number of units a student can earn in summer school, or through correspondence courses, or through an adult education program.

Notice of Drafting for the proposed amendment was published in the *State Register* on July 27, 2001.

Section-by-Section Discussion

43-240, Section A Adds new text to clarify the purposes of summer school programs and the types of summer school programs covered by the regulation.

43-240, Section B Amends the regulation to require every summer school program, not just those with 100 students or more, to employ a staff member with administrative certification.

43-240, Section B(2)(a) Amends the maximum pupil-teacher ratio allowed for grade 6 from 25:1 to 30:1.

43-240, Section B Deletes the limitation on the number of units of credit that may be earned in summer school or through correspondence courses or adult education.

Instructions: Replace, in its entirety Regulation 240, Summer Programs, which is under Chapter 43, Article 19, Summer Programs, with the following amended text. Change the title of Regulation 240, which is under Chapter 43, Article 19, Instructional Program, with the following new title 43-240. Summer School Programs.

Text:

43-240. Summer School Programs.

A. Summer school programs are provided for the following purposes: to deliver academic assistance to students in grades three through eight under the Education Accountability Act of 1998 (EAA), to promote students in grades one through eight, or to award Carnegie units of credit toward meeting the requirements for a state high school diploma. Other school services offered during the summer are not considered summer school programs under this regulation. Gifted and Talented programs are required to meet the provisions of State Board of Education Regulation 43-220, Gifted and Talented.

B. Instruction offered in summer programs must meet the same rigor and standards required during the regular school year. A district summer school program must be directed by a staff member with administrative certification as a district wide program or school site program. Each school in a district wide program must designate a lead teacher. The final accreditation status of the summer school program will be reflected in the overall district rating for the next year.

(1) Qualifications of Teachers: Kindergarten, Grades 1-12:

The qualifications of each teacher shall be the same as those for the regular term.

(2) Organization and Administration: Kindergarten, Grades 1–8:

(a) Pupil teacher ratio shall not exceed 25:1 in each classroom for grades K-5, or 30:1 in each classroom for grades 6-8.

(b) For students in grades 3-8, a summer school program designed for academic assistance under the Educational Accountability Act of 1998 (EAA) will be no less than 30 instructional hours. For students in grades K, 1, and 2, not on academic plans established by EAA, the districts may determine the length of the school day and the number of days scheduled.

(c) Summer school programs operated for students who are earning Carnegie units of credit must meet all the requirements established for grades 9-12.

(3) Organization and Administration: Grades 9-12.

(a) Pupil teacher ratio shall not exceed 30:1 in each classroom.

(b) All students taking a course for one unit of credit must receive at least 120 hours of instruction in that subject area.

(c) No teacher shall be assigned to teach more than one subject or one level of the same subject during one period for credit. (Exception: Two consecutive levels of coursework in the same subject area may be taught during one period if all students are repeating a course and the combined membership does not exceed 15 students.)

(d) There is no limit on the number of credits a student may earn in a summer program that is operated on a quarterly basis as part of a twelve-month school program.

Fiscal Impact Statement:

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

46 FINAL REGULATIONS

Statutory Authority: 1976 S.C. Code Section 59-26-20 (Supp. 2000)

43-90. Policies and Procedures and Unit Standards for Teacher Education Program Approval in South Carolina.

Synopsis:

The Department proposes to amend 24 S.C. Code Ann. Regs. 43-90 (Supp. 2000), Policies and Procedures and Unit Standards for Teacher Education Program Approval in South Carolina.

The Notice of Drafting was published in the *State Register* on July 27, 2001

Section-by-Section Discussion

24 S.C. Code Ann. Regs. 43-90 (Supp. 2000), Policies and Procedures and Unit Standards for Teacher Education Program Approval in South Carolina is being amended and replaced in its entirety for the purpose of establishing accreditation standards applicable to both public and private teacher education institutions.

Instructions: Replace, in its entirety, the text of Regulation 43-90 Policies and Procedures and Unit Standards for Teacher Education Program Approval in South Carolina, which is under Chapter 43, Article 6, Teacher Training Institutions, with the following amended text. Change the title of Regulation 43-90, which is under Chapter 43, Article 6, Teacher Training Institution, with the following new title 43-90, Program Approval Standards for South Carolina Teacher Education Institutions.

Text:

43-90. Program Approval Standards for South Carolina Teacher Education Institutions

The South Carolina State Board of Education requires that all teacher education programs meet the performance-based standards as established by the National Council for Accreditation of Teacher Education (NCATE). For State Board of Education approval, public institutions must seek and receive NCATE accreditation. Private institutions may seek NCATE accreditation or meet NCATE standards for State Board of Education approval. The State Department of Education will develop guidelines to assist teacher education programs to meet the NCATE performance-based standards. Statutory authority to determine accreditation decisions for and impose sanctions against teacher education programs is granted to the State Board of Education.

Fiscal Impact Statement: The State Department of Education estimates no additional costs will be incurred by the State and its political subdivisions in complying with the proposed regulation.

Document No. 2720

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**CHAPTER 61**Statutory Authority: S.C. Code Sections 44-1-110, 44-1-140 and 44-29-10 *et seq.*

R. 61-20. Communicable Diseases

Synopsis:

The Department has amended R.61-20 by removing scientifically obsolete concepts and updating language throughout as needed for the integration of new scientific concepts for control of communicable diseases, especially those that are unusual in their nature or occurrence, or that require immediate public health intervention. The amendment will update language to clarify, strengthen, improve and codify standards and terminology to be consistent with national standards. See Discussion below and Statement of Need and Reasonableness herein.

Discussion of Revisions:

SECTION: EXPLANATION OF CHANGE:

The statutory authority in the text of the regulation below the title was updated.

- | | |
|------------|---|
| Section 1 | The words "Contagious or infectious" were deleted, and the word "conditions" was added to bring the wording in line with other sections that specify reporting of infectious and other diseases and conditions. Our modifications change the date when changes in the list of reportable diseases must be specified each year, and enlarges the requirement of who must report such diseases, and how quickly. It defines more specifically what are "contagious diseases." |
| Section 2 | This section was deleted. This section was reserved and is no longer necessary. |
| Section 3 | Changes removed wording forbidding articles of clothing, etc., to be removed from a house with a quarantinable disease. DHEC retains its authority to make decisions on what is necessary to investigate and quarantine. |
| Section 5 | Delete Section 5 - This section was reserved and is no longer necessary. |
| Section 6 | In Section 6, language was updated and clarified. |
| Section 7 | In Section 7, this drafting modifies and specifies more clearly the standard medical documents from which the methods of control of communicable and other preventable diseases are usually taken, and requires health providers to contact DHEC when specific recommendations are needed in this area. |
| Section 8 | Delete Section 8 - This section was reserved and is no longer necessary. |
| Section 10 | Section 10 language was clarified to coordinate with other existing statutes. |
| Section 11 | Section 11 defines authorized health officers more clearly than before. |
| Section 14 | Delete Section 14 - This section was reserved and is no longer necessary. |
| Section 15 | Section 15 requires DHEC to publish an "Official School and Child Care Exclusion List of Contagious or Communicable Diseases" and modify it annually as needed. This is in |

48 FINAL REGULATIONS

response to frequent requests from health care and school providers for such recommendations from DHEC. This amendment clarifies that responsibility for exclusion of children with excludable conditions from school or child care remains with the children's parents and with the school or child care staff, and that notification by the attending physician or local health department is not required before exclusion.

Section 16 Section 16 was deleted because the information is covered by other sections of the Regulation.

Section 17 Section 17 was modified to change "quarantinable" to "excludable", and the section was reworded to bring it current and explain in more detail the criteria for exclusion. It further specifies that DHEC shall publish an "Official School and Child Care Contact Exclusion List of Contagious or Communicable Diseases" each year. This latter is in response to frequent requests from health care and child care providers for such guidance from DHEC.

Sections 18 & 19 Delete Sections 18 and 19 - No text appears at these sections and sections are no longer needed.

Section 22 In Section 22, the heading was modified to make it easier to understand.

Sections 20, 21, & 23 Sections 20, 21, 22, and 23 were amended to add the words "or state" pertaining to health authority.

After the sections described above are deleted, sections in the regulation will be renumbered stylistically in numerical order.

Instructions: Amend R.61-20 pursuant to each individual instruction provided with the text of the amendments below.

Text of Amendments:

Amend statutory authority in the text of the regulation under the title to read:

(Statutory Authority: 1976 Code Sections 44-1-110, 44-1-140 and 44-29-10 et seq.)

Amend Section 1 to read:

SECTION 1. Disease Reporting.

The Commissioner of the Department of Health and Environmental Control shall each year designate those diseases for which cases are to be reported by any attending physician, including intern, resident, staff physician and practitioner, other health care providers or designated reporting coordinators, health care institutions in South Carolina, and/or laboratories both within and outside South Carolina. This Official List of Reportable Conditions shall be issued in January of each year, and the occurrence of cases of the designated diseases shall be reported from January 1 through December 31 of that year. The person reporting cases of the designated disease shall report these cases to the county health department, as designated by criteria published in the Official List of Reportable Conditions. Such reports shall be in the manner and form designated by the Department of Health and Environmental Control. The county health department shall report to the Bureau of Disease Control of the Department of Health and Environmental Control all cases of specified conditions in the manner and form as designated by the Bureau of Disease Control.

Diseases that are unusual in their nature or occurrence or that require immediate public health intervention shall be reported within twenty-four hours or less as specified by the Official List of Reportable Conditions.

The term "contagious disease" in these regulations refers to any communicable disease that is easily transmitted person to person or from animal to person by:

- a. direct contact,
- b. aerosol/droplet inhalation,
- c. fecal/oral route,
- d. blood-borne/percutaneous
- e. vector-borne route

Delete Section 2:

Section 2. (Reserved)

Amend Section 3 to read:

SECTION 3. Householders, heads of families, etc., shall report contagious diseases.

Every hotel proprietor, keeper of a boarding house or inn, keeper or manager of tourist, trailer or other camp, and householder or head of a family, in a house wherein any case of a reportable disease may occur, shall report the same to the local health authority as early as possible after the time of his or her first knowledge or suspicion of the nature of the disease, unless a medical physician is already in attendance. The South Carolina Department of Health and Environmental Control has the authority to investigate and quarantine as necessary to control the contagious disease.

Section 4 remains the same - no changes.

Delete Section 5:

Section 5. (Reserved)

Amend Section 6 to read:

SECTION 6. Local health authorities shall keep records of contagious diseases.

Local health authorities shall collect a careful and accurate record of all cases of notifiable diseases reported to them, with the name, date, age, sex, race, location, and such other necessary data as may be prescribed from time to time by the Commissioner of the Department of Health and Environmental Control, and they shall also make a report of all notifiable diseases to the Bureau of Disease Control at such time and on such forms as may be required.

Amend Section 7 to read:

SECTION 7. Regulations relating to control measures, isolation and quarantine to be observed by all health providers.

The Department of Health and Environmental Control has responsibility and authority for specifying and directing the methods of control of communicable and other publicly preventable diseases.

The Department of Health and Environmental Control adopts and promulgates as regulations for defining and controlling communicable diseases the following publications including, but not limited to:

- a. American Public Health Association "Control of Communicable Diseases Manual," most current edition.

50 FINAL REGULATIONS

b. American Academy of Pediatrics, "Red Book," most current edition.

c. When necessary, the Department shall adopt other accepted national public health recommendations, such as Centers for Disease Control and Prevention (CDC) or Food and Drug Administration (FDA) guidelines, or shall make such other policies as needed to meet any emergencies or condition not provided for by general rules for the purpose of protecting public health in the matter of communicable, contagious, or infectious diseases.

All health providers, when necessary to protect public health, are required to contact the Department of Health and Environmental Control for recommendations regarding the matters addressed by this regulation.

Delete Section 8:

Section 8. (Reserved)

Section 9 remains the same - no changes.

Amend Section 10 to read:

SECTION 10. Health authorities are to assume control of quarantine, isolation and other control measures.

In all cities, towns and counties the local health authorities shall assume control and management of communicable diseases and exposures and shall see that isolation and control measures as herein provided are carried out in their respective jurisdictions. It shall be the duty of the proper health authority to institute proper methods and control and to so placard or otherwise to coordinate guarding the premises in a manner which in his own opinion is necessary to protect the public health.

Amend Section 11 to read:

SECTION 11. Authorized health officers may pass through quarantine lines.

All authorized health officers shall have the privilege and shall be allowed to pass through all quarantine lines, whether instituted at the instance of the State or local authorities, after first identifying themselves to the officers or guards as properly authorized health officers. An authorized health officer is an individual designated by the Commissioner or local health authority as an individual who may act as a health officer pursuant to these regulations. The Commissioner shall specify a method of identification that such officers must carry to verify their authority.

Sections 12 and 13 remain the same - no changes.

Delete Section 14:

Section 14. (Deleted)

Amend Section 15 to read:

SECTION 15. Children with contagious diseases shall not attend school or childcare in out-of-home settings.

No superintendent, principal, teacher of any school or provider of child care in an out-of-home setting, as defined in S.C. Code Ann. Section 20-7-2700, and no parent, master or guardian of any child or minor shall permit any such child or minor having any contagious or infectious disease or syndrome requiring isolation to attend any private, parochial, church or Sunday school when the disease or syndrome of the child or minor is on the Official School and Child Care Exclusion List of Contagious or Communicable Diseases. For the purpose of this

regulation, the Department of Health and Environmental Control shall publish in January of each year an Official School and Child Care Exclusion List of Contagious or Communicable Diseases, to include specific conditions for duration of school or child care exclusion and criteria for return for a child with any of these excludable diseases.

Delete Section 16:

Section 16. Superintendents of schools to be notified of contagious disease.

The local health authority shall notify the superintendent or principal of any school of the locations of quarantinable diseases, and if the superintendent or principal finds any attendance in school from such places except as strictly provided for herein, he shall deny them admission to the said school, and admit them only upon the written certificate or acknowledged telephone call of the attending physician or local health authority that there is no danger of infection for them.

Amend Section 17 to read:

SECTION 17. Contacts exposed to an excludable disease in relation to school attendance or childcare attendance in out-of-home settings.

When so notified by the public health authority that a child or minor has been exposed to certain highly communicable diseases, as referenced in the Official School and Child Care Contact Exclusion List of Contagious and Communicable Diseases, but the child or minor is not suffering from said disease, no superintendent, principal, teacher of any school or provider of child care in out-of-home settings; and no parent, master or guardian of any child or minor shall permit the exposed child or minor to attend school or child care until the attending physician or local public health authority states in writing that the child may return to school or child care, provided at least one of the following criteria is applicable:

- a. he/she has been determined not to have been exposed to the excludable disease during the maximum period of communicability;
- b. he/she has been determined to be immune to the disease,
- c. he/she has been determined to not be a carrier of the disease,
- d. he/she has been provided appropriate post-exposure prophylaxis,
- e. he/she has exceeded the maximum incubation period of the disease from the initial contact.

For the purpose of this regulation, the Department of Health and Environmental Control shall publish in January of each year an Official School and Child Care Contact Exclusion List of Contagious or Communicable Diseases, to include specific conditions for duration of school or child care exclusion and criteria for return for a child exposed to any of these excludable diseases.

Delete Section 18:

Section 18. (Deleted)

Delete Section 19:

Section 19 (Deleted)

Amend Section 20 to read:

52 FINAL REGULATIONS

SECTION 20. Health authorities to investigate reported cases.

Whenever the local or state health authority is informed or has reason to suspect that there is a case of contagious communicable disease within his territory, he shall immediately examine into the facts of the case and shall perform or require such examinations and tests as may be necessary to determine the contagiousness of the disease and shall adopt the methods of control applicable to such disease and necessary for the prevention of spread of the disease.

Amend Section 21 to read:

SECTION 21. Premises occupied by persons with contagious diseases to be rendered non-infectious.

No person shall offer for hire or cause or permit anyone to occupy premises, houses or apartments previously occupied by a person ill with any contagious or infectious communicable disease, or any other disease of communicable nature until such premises, houses or apartments shall have been rendered non-infectious according to the rules herein provided under the supervision of the local or state health authority.

Amend Section 22 to read:

SECTION 22. Premises designated as infectious shall be placarded.

Whenever these rules and regulations, or whenever the order of the local health authority requiring the disinfections or fumigation of apartments, premises, or articles shall not be complied with, or in case of delay, the local or state health authority shall forthwith cause to be placed upon the outside entrance or entrances a placard as follows:

"These apartments have been occupied by a patient or patients suffering with a contagious disease and they may have become infected. They must not be again occupied until my orders directing the renovation and disinfections of the same have been complied with. This notice must not be removed under penalty of law, except by an authorized official."

Amend Section 23 to read:

SECTION 23. Persons suffering from reportable diseases shall not work where food products are produced.

No person suffering with any reportable disease or who resides in a house in which there exists a case of smallpox, scarlet fever, dysentery, or typhoid fever shall work, or be permitted in or about any dairy or any establishment for the manufacture of food products until the local or state health authority has given such a person a written certificate to the effect that no danger to the public will result from his or her employ or presence in such establishment.

Section 24 remains the same - no changes.

Renumber all sections in numeric order.

Fiscal Impact Statement:

New costs to the regulated community will be minimal and in fact may be reduced by some of the deleted actions in the regulation.

Statement of Need and Reasonableness:

The statement of need and reasonableness of the regulation was determined based on staff analysis pursuant to S.C. Code Sections 44-1-110, 44-1-140 and 44-29-10 *et seq.*

DESCRIPTION OF REGULATION: Proposed revisions to Regulation 61-20, *Communicable Diseases*.

Purpose: To update language to clarify, strengthen, improve and codify standards and terminology to be consistent with national standards.

Legal Authority: Sections 44-1-110, 44-1-140 and 44-29-10 *et seq.*

Plan for Implementation: This amendment will take effect upon publication in the *State Register* following approval by the South Carolina General Assembly. The amendment will be implemented by providing the regulated community with copies of the regulation. Additionally, the amendment will be published in the DHEC *Epi-Notes*, as will also the annual update of the "Official Exclusion Lists for Communicable Diseases." The medical community will be further informed through presentations at professional meetings. The general public may access the regulations on the DHEC web site.

DETERMINATION OF NEED AND REASONABLENESS OF THE REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFIT: The revisions to the regulation are needed and reasonable because they will update State public health policies and practices according to the most recent medical knowledge on controlling communicable diseases.

The revisions are needed and reasonable because they promote use of national public health standards thereby reducing the likelihood of increases in communicable diseases because of ineffective disease prevention methods.

DETERMINATION OF COSTS AND BENEFITS:

See Preliminary Fiscal Impact Statement above for cost to the state and its political subdivisions. There will be very minimal costs to the regulated community. New costs to the regulated community will be minimal and in fact may be reduced by some of the deleted actions in the amended regulation.

UNCERTAINTIES OF ESTIMATES: None

EFFECTS ON ENVIRONMENT AND PUBLIC HEALTH:

There will be no effect on the environment.

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

There will be an adverse effect on the public health if the revision is not implemented, since the implementation of uniform, comprehensive standards based on up-to-date knowledge and practice would not be realized, thus denying the public those protections, thereby increasing the potential for occurrence of unnecessary cases of communicable diseases or outbreaks of such diseases. In addition, failure to implement will deny DHEC's compliance with its statutory mandate to protect the public's health as effectively as possible.

Document No. 2697

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

CHAPTERS 30 and 61

Statutory Authority: S.C. Code Section 48-39-10 *et seq.*

54 FINAL REGULATIONS

R.30-2. *Applying for a Permit*

R.30-4. *Decision on a Permit*

Regulations for Permitting in the Critical areas of the Coastal Zone

R.61-30. *Environmental Protection Fees*

Synopsis:

(1) The Department proposes to amend R.30-2.B(9) which contains the current application fee schedule for activities in the critical area of the eight coastal counties, and revise R.30-4.C and 4.H to insert clarifying language, making these sections consistent with the administrative processes defined and described in R.61-30, *Environmental Protection Fees*.

(2) The Department is also proposing to amend R.61-30.A to add a reference, and R.61-30.B will be revised to insert new definitions which explain terms relevant to the coastal zone management program. New sections R.61-30.G(14) and R.61-30.H(3) will be added to describe the fees and time schedules for activities in the critical area of the eight coastal counties and to increase the fee for major activities in the critical areas of the coastal zone, and to add new fees for the transfer or extension of permits for both minor and major activities.

A Notice of Proposed Regulation for this proposed amendment was published in the State Register on November 25, 2001. See Discussion below and Statement of Need and Reasonableness herein.

Discussion of Proposed Revisions:

(1) Proposed Amendment of R.30-2 and R.30-4:

| <u>SECTION</u> | <u>CHANGE</u> |
|----------------|--|
| 30-2.B(9) | Delete current administrative fee schedule for permit applications and add a reference to R.61-30.G(14). |
| 30-4.C | The word 'administratively' is added to insure compatibility with the term 'administratively complete' as used in R.61-30, <i>Environmental Protection Fees</i> , and a reference to R.61.30 is added. |
| 30-4.H | Language is amended to insure compatibility with processes in R.61-30, <i>Environmental Protection Fees</i> , that describe amendment requests, and a reference to R.61.30 is added. |

(2) Proposed Amendment of R.61-30:

| | |
|---------|---|
| 61-30.A | Language is added to include reference to the Coastal Tidelands and Wetlands statute, S.C. Code Section 48-39-145. |
| 61-30.B | Four new definitions are added in alphabetical/numerical order. Definitions are added for "Minor activity", "Major activity", "Permit extension", and "Transfer of permits". |
| 61-30.G | A new section (14) is added that includes the fee schedule for the Coastal Zone Management Program. This includes critical area permit application fees for minor and major activities, and extensions or transfers of minor and major permits. |
| 61-30.H | A new section (3) is added that includes the time schedules for processing critical area permits. |

Text of Proposed Amendment:**Amend R.30-2(B)(9) to read:**

(9) The administrative fees for permit applications are included in R.61-30.G(14).

Amend R.30-4.C to read:

Action Upon a Permit: The Department according to Section 48-39-150.C shall act upon an application for a permit within ninety days. This ninety-day period shall begin when the application is administratively complete and filed in approved form. The file is administratively complete when all required information, including fees, newspaper notices, proof of ownership and certifications have been received. Exceptions of the 90-day deadline are applications for minor development activities on which action must be taken in thirty days. Permits are deemed issued after signature by applicant and appropriate OCRM staff. See R.61-30 for further descriptions of the administrative processes governing action on a permit.

Amend R.30-4(H) to read:

Amendment to a Permit: An amendment to a permit can be made without the requirements of a new permit if the proposed change on the amendment does not significantly increase the size or change the use of the permitted project. If the amendment request includes a major modification to the existing permit requiring substantial technical review by the Department, the amendment proposal will be considered a new application and will require a fee equal to the original permit application fee, a newspaper notice and will be placed on public notice by OCRM. See R.61-30 for further descriptions of the administrative processes governing amendments to a permit.

Amend R.61-30.A to read:

A. PURPOSE AND SCOPE. Pursuant to South Carolina Code Sections 48-2-50 (1993) and 48-39-145, the Department of Health and Environmental Control shall charge fees for environmental programs it administers pursuant to federal and state law and regulations. This regulation prescribes those fees applicable to applicants and holders of permits, licenses, certificates, certifications, and registrations (hereinafter, "permits") and establishes schedules for timely action on permit applications. This regulation also establishes procedures for the payment of fees, provides for the assessment of penalties for nonpayment, and establishes an appeals process to contest the calculation or applicability.

Amend R.61-30.B by adding four new definitions and renumber:

(10) "*Minor activity*" As pertains to Coastal Zone Management Program, activities which are noncommercial/nonindustrial in nature and provide personal benefits that have no connection with a commercial/industrial enterprise. These include, but are not limited to, activities to construct such structures as private docks, bulkheads to prevent erosion of individual property, beachfront homes seaward of the baseline, and private boat ramps.

(11) "*Major activity*" As pertains to Coastal Zone Management Program, any construction activity that is not a minor activity. These include, but are not limited to, activities such as marina construction, construction of docks for commercial endeavors, dredging for navigation channels, pipeline construction, and beach renourishment projects.

(12) "*Permit Extension*" As pertains to Coastal Zone Management critical area permits, is the extension of an existing permit as allowed pursuant to Section 48-39-150(F) and R.30-4(D).

56 FINAL REGULATIONS

(22) “*Transfer of permits*” As pertains to the Coastal Zone Management Program, means the written permission of the Department transferring a permit from one person to another.

Add new section R.61-30.G(14) to read:

(14). Coastal Zone Management Program

(a). General.

(i). The fees assessed are those fees sufficient to cover a portion of the reasonable costs associated with the development, processing, and administration of the Coastal Zone Management Program.

(ii). Fees collected shall be placed in a separate non-reverting account within the Department to be used exclusively for the expenses in G(14)(a)(i), except for the amounts dedicated to the Coastal Resources Access Fund (CRAF). DHEC-OCRM shall make matching grants from the fund on a 50/50 basis to local governments in the South Carolina Coastal Zone for projects which enhance the public’s use and enjoyment of coastal resources. A portion of the funds collected as per G(14)(b) shall be dedicated to the CRAF.

(iii). Local governments will only be charged the fee for a minor activity and State agencies will not be charged.

(b). Critical Area Permit Application Fees

- (i). Minor activity: \$50.00
- (ii). Major activity: \$1000.00
- (iii). Extensions or transfers of minor permits: \$25.00
- (iv). Extensions or transfers of major permits: \$100.00

Add new section R.61-30.H(3) to read:

(3). Coastal Zone Management Program.

(a). Critical Area Permits

- (i). Minor activities: 30 days
- (ii). Major activities: 90 days
- (iii). Extensions or transfers of minor activity permits: 15 days
- (iv). Extensions or transfers of major activity permits: 30 days

Fiscal Impact Statement:

The Department estimates no additional cost will be incurred by the state or its political subdivisions as a result of the promulgation, approval, and implementation of these amendments; therefore, no additional state funding is being requested. These fees are intended to provide a static level of funding for the programs as described herein.

Statement of Need and Reasonableness:

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

DESCRIPTION OF REGULATIONS:

R.30-2, Applying for a Permit

R.30-4, Decision on a Permit
 R.61-30, Environmental Protection Fees

Purpose of Regulation: The purpose of this amendment is to: (1) delete the text of R.30-2.B(9) which contains the current application fee schedule for activities in the critical area of the eight coastal counties and insert a reference to R.61-30, *Environmental Protection Fees*. R.30-4.C and 4.H will be amended to insert clarifying language, making these sections consistent with the administrative processes defined and described in R.61-30. (2) R.61-30.A will be revised to add reference to the Coastal Tidelands and Wetlands statute, and new definitions will be added in R.61-30.B which explain terms relevant to the Coastal Zone Management Program. New sections R.61-30.G(14) and R.61-30.H(3) will be added to R.61-30 to describe the fees and time schedules for activities in the critical area of the eight coastal counties and to increase the fee for major activities in the critical areas of the coastal zone. New fees for the transfer or extension of permits for both minor and major activities will be added.

Legal Authority: S.C. Code Sections 48-39-10 *et seq.*

Plan for Implementation: The proposed amendments will make changes to and be incorporated into R. 30-2 and R.30.4, and R.61-30 upon approval of the Board of Health and Environmental Control, the S.C. General Assembly, and publication in the State Register. The proposed amendments will be implemented in the same manner in which the existing regulations are implemented.

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

(1) Coastal Zone Management Critical Area Application Fees and Processes. The proposed amendment would delete the text at R.30-2.B(9) that contains the current application fee schedule for activities in the critical area of the eight coastal counties, and a reference to R.61-30 will be added. This amendment would also revise R.30-4.C and R.30-4.H to insert clarifying language, making these sections consistent with the administrative processes defined and described in R.61-30, *Environmental Protection Fees*. This change is proposed to insure consistency of administrative processes between the permitting programs of DHEC-OCRM and DHEC-EQC.

(2) Environmental Protection Fees. This proposed amendment would revise R.61-30.A, Purpose and Scope, and insert new definitions in R.61-30.B to explain terms relevant to the Coastal Zone Management Program. New sections R.61-30.G(14) and R.61-30.H(3) would be added to describe the fees and time schedules for activities in the critical area of the eight coastal counties. These changes are proposed to add the fees associated with the Coastal Zone Management Program in R.61-30. These changes are also proposed to include an increase in the fee for major activities in the critical areas of the coastal zone, and new fees for the transfer or extension of permits for both minor and major activities. The complexity and controversy associated with reviewing, inspecting and issuing these permits have increased significantly in recent years. Since 1993, the fees for activities in the critical area have gone into the Coastal Resources Access Fund, which provides grants to coastal communities to construct access facilities for the public. The proposed fee increases will allow the Department to continue funding these important access projects, as well as generate funds to offset the increasing costs of managing the program. The new fees for transfer or extension of permits are proposed to cover a portion of the administrative costs associated with processing these requests in a timely manner. No additional staff will be hired as a result of these increases in fees.

DETERMINATION OF COSTS AND BENEFITS: There will be an increased cost to the regulated community with the implementation of the regulation changes proposed in items (2) and (3) above. However, such costs have been kept to a minimum in order to limit impacts on the regulated public. The proposed increases will defray a portion of the costs of administering the programs. The benefits to the citizens of the State, which accrue through the protection of coastal tidelands and statewide water resources, are significant and offset the cost to the regulated community. Additionally, these changes will help insure the continued ability of the Department meet the needs of the regulated community for timely processing of permitting requests by maintaining existing staffing levels.

58 FINAL REGULATIONS

UNCERTAINTIES OF ESTIMATES: The Department can be reasonably accurate on the costs associated with time and effort to review environmental permits. Some uncertainties exist with estimating future permitting demand. However, since actively measuring and reporting on required time frames, the Department has had a 97% success rate in meeting review times established in regulations.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: Substantive review of projects which have a negative impact on the environment and/or public health is necessary to protect both the natural resources of South Carolina and the health of its citizens. Experience has shown that proper funding of permitting programs, coupled with an organizational philosophy to streamline the process, works best to both protect the environment and provide an economic boost to applicants by assuring them a timely response from the State.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED: To repeat the statement above, a lack of appropriate resources slows the permitting process. Insufficient funding creates backlogs of permits awaiting review. This in turn negatively affects the timely turnaround of projects, which may be addressing a potential pollution problem. It prevents the issuance of restrictive permits intended to protect the public health and environment.

Resubmitted May 9, 2002

Document No. 2673
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61

Statutory Authority: S.C. Code Section 48-2-50, 48-2-10 *et seq.*

R.61-30, *Environmental Protection Fees*

Synopsis:

Pursuant to S.C. Code Section 48-2-50 (1993), the Department shall charge fees for environmental programs it administers pursuant to federal and state law and regulations. R.61-30, *Environmental Protection Fees*, prescribes those fees applicable to applicants and holders of permits, licenses, certificates, certifications, and registrations (hereinafter, "permits") and establishes schedules for timely action on permit applications. This regulation also establishes procedures for the payment of fees, provides for the assessment of penalties for nonpayment, and establishes an appeals process to contest the calculation or applicability of the fees.

This amendment will revise R.61-30 as follows:

- (1) Raise fees for NPDES and No-Discharge permit annual fees to maintain existing staff and present turnaround times for issuing permits and general program activities. [61-30.G(1)(a)(i)-(iii)]
- (2) Raise fees for drinking water annual fees to maintain existing staff and the present level of services to the public water systems. [61-30.G(2)]
- (3) Raise water quality certification application fees to maintain existing staff and present turnaround time for issuing certifications and general program activities. [61-30.G (1)(b)]
- (4) Add a category for the large swine facilities with an appropriate fee. [61-30.G (1)(a)(v)]
- (5) Add a category of agricultural applications, e.g. upgrades and additions, for which application fees will be applicable. [61-30.G (1)(d)]

(6) Raise fees for construction NPDES Storm Water Permits in order to hire additional field staff for compliance determinations. [61-30.G(1)(c)(v)]

(7) Add a new fee, which will be submitted to the Department with the new NPDES Storm Water form on "No Exposure Certification for exclusion" from NPDES Storm Water Permitting. [61-30.G (1)(e)]

In addition, due to numerous revisions at 61-30.G(1) and G(2) described above, stylistic changes are made in form and outline; these sections will be replaced in entirety.

Section-by-Section Discussion: See Statement of Need and Reasonableness herein.

Instructions: Amend R.61-30 pursuant to each individual instruction provided below with the text of the amendment.

Text of Amendment:

Replace 61-30.G(1) and G(2) in entirety to read:

G. SCHEDULE OF FEES

(1) Water Pollution Control.

(a) Annual Fees for NPDES and State Construction Permits and State Land Application Permits.

Annual operating fees for facilities with five or less pipes must be calculated based on the previous year's actual flow except for municipal separate storm sewer system (MS4) permits and coverage under a general permit. Annual operating fees for facilities with more than five pipes must be calculated based on the number of pipes except for municipal separate storm sewer system (MS4) permits and coverage under a general permit.

(i) Facilities with five or less discharge pipes:

| | |
|--|---------|
| 1. Flow greater than 4,999,000 gal/day | \$2,660 |
| 2. Flow 2,000,000 - 4,999,999 gal/day | \$2,130 |
| 3. Flow 1,000,000-1,999,999 gal/day | \$1,600 |
| 4. Flow 500,000-999,999 gal/day | \$1,330 |
| 5. Flow 100,000-499,999 gal/day | \$1,065 |
| 6. Flow 50,000-99,000 gal/day | \$ 800 |
| 7. Flow 0-49,999 gal/day | \$ 530 |

(ii) For six (6) or more discharge pipes \$1,600
 plus \$800/discharge for each discharge pipe over five.
 (\$2,400 minimum charge).

(iii) Coverage under General Permit \$ 100
 (except for NPDES Storm Water General Permits)

(iv) Municipal Separate Storm Sewer Systems

60 FINAL REGULATIONS

1. Individual Permits

| | |
|---|----------|
| a. Large MS4 (population equal to or greater than 250,000) | \$25,000 |
| b. Medium MS4 (population equal to or greater than 100,000 and less than 250,000) | \$15,000 |
| c. Small MS4 (population less than 100,000) | \$10,000 |

| | |
|--|----------|
| 2. Coverage under a MS4 General Permit | \$ 2,000 |
|--|----------|

(v) Agricultural Facilities

Annual Fee will be based on maximum permitted capacity.

1. Swine Facilities

| | |
|--|--------|
| a. Facilities with a capacity of 1,000,000 pounds or more of normal production animal live weight at any one time | \$ 500 |
| b. Facilities with a capacity between 500,000 pounds and 1,000,000 pounds of normal production animal live weight at any one time | \$ 300 |
| c. Facilities with a capacity of less than 500,000 pounds of normal production animal live weight at any one time | \$ 150 |

2. Other Animal Operations

| | |
|---------------------------------|--------|
| a. Dry Manure/Litter Operations | \$ 75 |
| b. Wet Manure/Litter Operations | \$ 150 |

| | |
|--|-------|
| (vi) Industrial NPDES Storm Water General Permit Coverage | \$ 75 |
|--|-------|

(b) Water Quality Certification Application Fees.

| | |
|--|----------|
| (i) Certification of major activities requiring federal or state permits | \$ 1,000 |
| (ii) Certification of minor activities requiring federal or state permits | \$ 100 |

(c) Construction Permit Fees.

(i) Pretreatment Systems

- 1. For simple systems, such as one-component systems (e.g. oil/water separators, air strippers, PH control, etc.) \$ 200
- 2. Complex (such as Multi-Component) systems \$ 600

(ii) Collection Systems

- 1. Non-Delegated Program
 - a. 1000 ft. or less \$ 100
 - b. 1,001 to 9,999 ft. \$ 200
 - c. 10,000 ft. or greater \$ 350
 - d. Pump stations with or without sewer lines (Fee exempt for individual, residential pumps) \$ 350
- 2. Delegated Project Review Program \$ 75

(iii) Wastewater Treatment Facilities. Fees for modifications without expansions will be assessed by the Department only for those modifications which require the actual submission of plans and specifications to the Department for review.

- 1. Facilities with a Flow of 1,000,000 GPD or greater
 - a. New \$ 1,050
 - b. Expansion \$ 800
 - c. Modification without Expansion (Engineering review required) \$ 550
 - d. Modification without Expansion (No Engineering review required) NC
- 2. Facilities with a Flow of 0-999,999 GPD
 - a. New \$ 700
 - b. Expansion \$ 550
 - c. Modification without Expansion (Engineering review required) \$ 400
 - d. Modification without Expansion (No Engineering review required) NC

62 FINAL REGULATIONS

(iv) Project submittals with both collection and treatment components pay the sum of the applicable collection and treatment fees under (i), (ii), and (iii) above.

(v) Construction NPDES Storm Water Permit

- | | |
|--|---|
| 1. When the Department is the entity responsible for reviewing the Stormwater Pollution Prevention Plan submitted for review | \$ 125 Plus \$ 100 per disturbed acre (not to exceed \$2000) |
| 2. When an entity other than the Department is responsible for review of the Storm Water Pollution Prevention Plan and the entity's approval serves as a notice of intent for coverage under the general permit. | \$ 125 |

(d). Agricultural Waste Management Plan Application.

(i). New or Expanding Swine Facilities

- | | |
|---|----------|
| 1. Facilities with a capacity of 1,000,000 pounds or more of normal production animal live weight at any one time | \$ 2,500 |
| 2. Facilities with a capacity between 500,000 pounds and 1,000,000 pounds of normal production animal live weight at any one time | \$ 680 |
| 3. Facilities with a capacity of less than 500,000 pounds of normal production Animal live weight at any one time | \$ 340 |

(ii) New* or expanding Other Animal Facilities

- | | |
|--------------------------------|--------|
| 1. Dry Manure/Litter Operation | \$ 165 |
| 2. Wet Manure/Litter Operation | \$ 240 |

*includes conversion to another type of facility, i.e. poultry to swine.

(e) Industrial Storm Water 'No Exposure' Certification \$ 350

(2) DHEC: Safe Drinking Water Act.

(a) In order to comply with the provisions of the federal Safe Drinking Water Act, the Department is authorized to collect a fee from each public water system. The fee must be based upon the number of taps through which the system provides water to its customers. The fees collected must be returned to the department for the purposes of implementing the Safe Drinking Water Act Regulatory Program including engineering plan review, compliance inspections, and enforcement; and for providing technical assistance and monitoring and laboratory analytical services for the public water systems of the State. The fee shall be as follows:

(i)Community And Non-Transient Non-Community Water Systems

Fee = Program Administration Component
 + Distribution Monitoring Component
 + Source Monitoring Component

Program Administration Component:

\$12.50 x (# Taps Up To 10) + \$8.35 x (# Taps From 11 To 25) + \$6.75 x (# Taps From 26 To 50) + \$5.00 x (# Taps From 51 To 100) + \$3.35 x (# Taps From 101 To 500) + \$2.50 x (# Taps From 501 To 1,000) + \$1.70 x (# Taps From 1,001 To 5,000) + \$1.25 x (# Taps From 5,001 To 10,000) \$0.80 x (# Taps From 10,001 To 15,000) + \$0.40 x (# Taps From 15,001 To 25,000) + \$0.25 x (# Taps From 25,001 To 50,000) + \$0.15 x (# Taps From 50,001 To 100,000) + \$0.10 x (# Taps Greater Than 100,000)

Distribution Monitoring Component:

\$175 (Systems Serving Up To 100 Taps); Or,
 \$500 (Systems Serving 101 To 1,000 Taps); Or,
 \$2,500 (Systems Serving 1,001 To 15,000 Taps); Or,
 \$5,000 (Systems Serving Greater Than 15,000 Taps)

Source Monitoring Component:

[\$250 x (#GW Sources) + (\$500 x (#SW Sources))] (Up To 25 Taps); Or,
 [(\$450 x (#GW Sources) + (\$800 x (#SW Sources))] (From 26 To 100 Taps);
 Or, [\$1,250 x (#GW Sources) + \$1,800 x (#SW Sources)] (Greater Than 100 Taps; Or, [Maximum \$7,500]

Program Administration Component of Fee (Base Amount + Rate Per Tap)

| <i>System Size</i> | <i>Base Amount</i> | <i>Rate Per Tap</i> | |
|--------------------|--------------------|---------------------|-----------------------|
| 1 – 10 | \$ 0 | \$12.50 | First 10 Taps |
| 11 – 25 | \$ 125 | \$ 8.35 | Taps 11 – 25 |
| 26 – 50 | \$ 250 | \$ 6.75 | Taps 26 – 50 |
| 51 – 100 | \$ 419 | \$ 5.00 | Taps 51 – 100 |
| 101 – 500 | \$ 669 | \$ 3.35 | Taps 101 – 500 |
| 501 – 1000 | \$ 2,009 | \$ 2.50 | Taps 501 – 1,000 |
| 1,001 – 5,000 | \$ 3,259 | \$ 1.70 | Taps 1,001 – 5,000 |
| 5,000 – 10,000 | \$ 10,059 | \$ 1.25 | Taps 5,001 – 10,000 |
| 10,001 – 15,000 | \$ 16,309 | \$ 0.80 | Taps 10,001 – 15,000 |
| 15,001 – 25,000 | \$ 20,309 | \$ 0.40 | Taps 15,001 – 25,000 |
| 25,001 – 50,000 | \$ 24,309 | \$ 0.25 | Taps 25,001 – 50,000 |
| 50,001 – 100,000 | \$ 30,559 | \$ 0.15 | Taps 50,001 – 100,000 |
| 100,001 and Above | \$ 38,059 | \$ 0.10 | Taps Over 100,000 |

DISTRIBUTION AND SOURCE MONITORING COMPONENTS OF FEE

| <i>System Size</i> <i>(Number Of Taps)</i> | <i>Distribution Monitoring</i> <i>(Fixed Rate)</i> | <i>Source Monitoring</i> <i>(Rate per Source)</i> | |
|---|---|--|----------------------|
| | | <i>Ground Water</i> | <i>Surface Water</i> |
| 1 – 10 | \$ 175 | \$ 250 | \$ 500 |
| 11 – 25 | \$ 175 | \$ 250 | \$ 500 |

64 FINAL REGULATIONS

| | | | |
|-------------------|----------|----------|----------|
| 26 – 50 | \$ 175 | \$ 450 | \$ 800 |
| 51 – 100 | \$ 175 | \$ 450 | \$ 800 |
| 101 – 500 | \$ 500 | \$1,250 | \$ 1,800 |
| 501 – 1000 | \$ 500 | \$ 1,250 | \$ 1,800 |
| 1,001 – 5,000 | \$ 2,500 | \$1,250 | \$ 1,800 |
| 5,000 – 10,000 | \$ 2,500 | \$1,250 | \$ 1,800 |
| 10,001 – 15,000 | \$ 2,500 | \$1,250 | \$ 1,800 |
| 15,001 – 25,000 | \$ 5,000 | \$1,250 | \$ 1,800 |
| 25,001 – 50,000 | \$ 5,000 | \$1,250 | \$ 1,800 |
| 50,001 – 100,000 | \$ 5,000 | \$1,250 | \$ 1,800 |
| 100,001 And Above | \$ 5,000 | \$1,250 | \$ 1,800 |

(ii) OTHER PUBLIC WATER SYSTEMS

| | |
|--|-------------|
| Transient Non-Community Systems | Fee = \$250 |
| Systems Serving More Than 1 Tap But Less Than 15 Taps and Serving Less Than 25 People | Fee = \$150 |
| Systems Serving 1 Tap and Serving Less than 25 People | Fee = \$100 |
| Vending Machines | Fee = \$ 50 |

(iii) For the purposes of this fee schedule, tap is defined as a service connection, the point at which water is delivered to the consumer (building, dwelling, commercial establishment, camping space, industry, etc.) from a distribution system, whether metered or not and regardless of whether there is a user charge for consumption of the water.

(iv) The Department shall submit an annual report to the Senate Finance Committee, House Ways and Means Committee, South Carolina Section American Water Works Association and the Municipal Association detailing activities funded from safe drinking water fees. The report shall include the amount of fees collected from each waterworks and the listing of expenditures from those fees. The expenditures shall be accompanied by a list of benefits the waterworks receive from the State as a result of the fees. In providing monitoring and laboratory analytical services, DHEC will consider least cost alternatives including contracting with private laboratories when appropriate. DHEC shall include all applicable direct and indirect costs in developing cost comparisons with private laboratories.

(v) Penalties. All fees remaining unpaid thirty (30) days after billing will be issued a late notice with no penalty due; however, it will contain advisement of penalty for non-payment after sixty (60) days. Fees remaining unpaid after sixty days will be assessed a ten percent (10%) penalty. Fees remaining unpaid at the end of ninety (90) days will be assessed a twenty-five percent (25%) penalty in addition to the sixty day penalty. The Department may waive any or all of the assessed penalties in extenuating circumstances. The sum of both penalties may not exceed five thousand dollars. Persons delinquent under this paragraph will be notified by the Department by certified mail at their last known address.

1. All returned checks will be subject to a returned check fee as outlined in the DHEC Administrative Policy and Procedures Manual. This penalty will be in addition to those outlined above.

2. No monitoring will be conducted on systems with fees unpaid at the end of ninety (90) days.

Fiscal Impact Statement:

These fees are intended to provide a static level of funding for the programs as described herein, imposing no additional impact on state funds for the Department.

Statement of Need and Reasonableness:

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

DESCRIPTION OF REGULATION: R.61-30, *Environmental Protection Fees*

Purpose: This amendment will revise R.61-30, as follows:(1) Raise fees for NPDES and No-Discharge permit annual fees to maintain existing staff and present turnaround times for issuing permits and general program activities. (2) Raise fees for drinking water annual fees to maintain existing staff and the present level of services to the public water systems. (3) Raise water quality certification application fees to maintain existing staff and present turnaround time for issuing certifications and general program activities. (4) Add a category for the larger swine facilities with an appropriate fee. (5) Add a category of agricultural applications (e.g. upgrades and additions) for which application fees will be applicable. (6) Raise fees for construction NPDES Storm Water Permits. (7) Add a new fee, which will be submitted to the Department with the new NPDES Storm Water form on "No Exposure Certification for exclusion from NPDES Storm Water Permitting."

Legal Authority: S.C. Code Section 48-2-10 *et seq.*

Plan for Implementation. This amendment will be incorporated into R.61-30 upon approval of the S.C. General Assembly and publication in the State Register. The regulations will be implemented in the same manner in which the present regulation is implemented.

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

(1). NPDES and No-Discharge Permit Annual Fees. [61-30.G (1)(a)(i-(iii))] These fees are charged annually to all NPDES and No-Discharge permit holders and have been in place since 1992. There are no application fees for these permits. These fees are designed to cover a portion of the costs of maintaining the permit records, receiving and processing the required reports, and reissuing the permit every five years. The fee amount is calculated based on the previous year's actual flow. The fee amounts have not changed since their inception. In recent years, the costs of reviewing, issuing and maintaining these permits have increased. More sophisticated models have to be used to generate wasteload allocations. More of the permits being issued have to have complex limits in order to maintain water quality or to restore waters of the state to meet water quality standards. The Department proposes to raise the fees to maintain existing staff and present turnaround times for issuing permits and general program activities. No additional staff will be hired as a result of this increase.

(2). Drinking Water Annual Fees. [61-30.G (2)]. These fees are charged annually to all public water systems and have been in place since 1993. These fees are designed to cover a portion of the costs of operating the public water system supervision (PWSS) program delegated by US EPA to SC DHEC and to allow the Department to conduct the quarterly and annual compliance monitoring required by the Safe Drinking Water Act. For many years the drinking water fund maintained a reasonable balance at the end of each fiscal year. In order for the fund not to accumulate too much money, the fee schedule has been adjusted down three times since its inception. The recent promulgation of a new round of unregulated contaminant monitoring established new contaminants, and therefore new laboratory methods had to be developed or new contracts with private, commercial labs had to be established. The promulgation of the disinfectant and disinfect ion by-product rule, and the radionuclide rule have also established new contaminants and laboratory methods, greatly increasing the cost of operating the monitoring program. The Department proposes to raise the fees to maintain existing staff and the present level of services to the public water systems. No additional staff will be hired as a result of this increase.

66 FINAL REGULATIONS

(3). Water Quality Certification Application Fees [61-30.G(1)(b)]. These are application fees for 401 Water Quality Certifications and have been in place since 1992. These fees are designed to cover a portion of the costs of processing the applications, conducting field visits and maintaining the certification records. The fee amount is calculated based on the average amount of staff time required to process an application. The fee amounts have not changed since their inception. In recent years, the costs of reviewing, issuing and maintaining these certifications have increased. Many of the certifications involve impacts to or adjacent to impaired waters and almost all now require review of mitigation plans. The Department proposes to raise the fees to maintain existing staff and present turnaround times for issuing certifications and general program activities. No additional staff will be hired as a result of this increase.

(4). Agricultural Annual Operating Fees [61-30.G (1)(a)(v)]. Live weight categories are adjusted per action of the Board on the pending agricultural regulations. This is necessary to maintain existing staff and present turnaround times for issuing permits and general program activities. No additional staff will be hired as a result of the new fee for large facilities.

(5). Agricultural Waste Management Plan Application [61-30.G (1)(d)]. The Department proposes to add more categories of agricultural applications (e.g., upgrades and additions) for which application fees will be applicable. Live weight categories are adjusted per action of the Board on the pending agricultural regulations. This is necessary to maintain existing staff and present turnaround times for issuing permits. No additional staff will be hired as a result of the increased and new fees.

(6). Construction NPDES Storm Water Permit Fees [61-30.G (1) (c)(v)]. Presently NPDES permit coverage is required for land disturbing activities on sites of 5 acres or more and will be required on sites of one acre or more in the near future. These fees are designed to cover only a portion of the costs of reviewing best management plans and general permit coverage. No change is made in the base fee. The per disturbed acre fee is increased to \$100 to provide consistency with coastal storm water proposals. No additional staff will be hired as a result of this change.

(7). No Exposure Certification for exclusion from NPDES Storm Water Permitting. [new 61-30.G (1)(e)]. The Department is proposing to add a new fee, which will be submitted to the Department with the new NPDES Storm Water form on "No Exposure Certification for exclusion from NPDES Storm Water Permitting." Under the Phase I Storm Water regulations, owners of facilities that were defined as associated with industrial activity" and that were eligible for the "no exposure" exemption from the NPDES Storm Water Program were not required to submit anything to the Department to qualify for the exemption. This process was self-determination with no oversight by the Department on the program exemption. Now, under the federal Phase II Storm Water Regulations which the Department has adopted with an effective date of July 27, 2001, all facilities classified as associated with industrial activity, except construction, are now eligible to be exempted from the NPDES Storm Water Program if they submit the "No Exposure Certification for exclusion from NPDES Storm Water Permitting" form to the Department. The Department now has oversight of these self-determinations. This fee is designed to cover a portion of the costs of administratively processing the new forms and providing oversight of the no exposure exemption. Additional staff may be hired as a result of this new fee.

Due to numerous revisions at 61-30.G(1) and G(2), described above, stylistic changes are made in form and content; these sections are replaced in entirety.

DETERMINATION OF COSTS AND BENEFITS:

All applicants for environmental permits under the Agriculture Facilities program will bear the costs of administration by the Department. Act 460 of 1996 mandates this program be established to control potential environmental hazards from agricultural facilities. Benefits will be to the environment and public health of South Carolina.

Applicants for permits to construct or modify Public Drinking Water facilities in South Carolina create a drain on the Department's fiscal resources. The size and scope of applications which can take considerable staff time to review, a lack of state appropriations compounded by budget cuts in the permitting program and reductions in federal funding necessitate the implementation of this fee amendment. There are numerous affected entities in South Carolina. An efficient and timely turn around on these projects can foster a positive economic impact.

UNCERTAINTIES OF ESTIMATES:

The Department can be reasonably accurate on the costs associated with time and effort to review environmental permits. Unknowns, such as withdrawal/ resubmittal scenarios, have an impact on individual activities. However, since actively measuring and reporting on required time frames, the Department has had a 97% success rate in meeting review times established in the regulation.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

Substantive review of projects which have a negative impact on the environment and/or public health is necessary to protect both the natural resources of South Carolina and the health of its citizens. Experience has shown that proper funding of permitting programs, coupled with an organizational philosophy to streamline the process, works best to both protect the environment and provide an economic boost to applicants by assuring them a timely response from the state.

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

To repeat the statement above, a lack of appropriate resources slows the permitting process. Insufficient funding creates backlogs of permits awaiting review. This in turn negatively affects the timely turnaround of projects, which may be correcting a serious pollution problem. It prevents the issuance of restrictive permits intended to protect the public health and environment.

68 FINAL REGULATIONS

Document No. 2735

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Chapter 61

Statutory Authority: 1976 Code Ann. Section 44-56-30

R.61-79 Hazardous Waste Management Regulations:

Synopsis:

The Department is amending R.61-79 to reflect federal amendments through June 30, 2001. The United States Environmental Protection Agency (EPA) promulgates amendments to 40 CFR 124, 260 through 266, 268, 270, and 273 throughout each calendar year by publication in the Federal Register. Recent federal amendments include the following: clarification of final standards for hazardous waste combustors, listing of two chlorinated aliphatics production wastewater treatment sludges (K174 and K175) including a contingent-management listing approach; increased flexibility to certain facilities that store and treat mixed low-level radioactive and hazardous wastes; the temporary deferral of PCB treatment standards for metal contaminated soils; and revisions to the mixture and derived-from rules. In addition, other minor amendments have been made to reflect changes in State government. These rules and other amendments were published in the Federal Register between July 1, 2000, and June 30, 2001. Pursuant to the Hazardous Waste Management Act Section 44-56-30, the Department intends to amend R. 61-79 by adopting these federal amendments. These amendments appeared at 65 FR 42292 and 66 FR 24270 published July 10, 2000 and May 14, 2001; 65 FR 67068 published November 8, 2000; 65 FR 81373 published December 26, 2000; 66 FR 27218 published May 16, 2001; 66 FR 27266 published May 16, 2001; and 66 FR 37374 published June 28, 2001.

Discussion of Revisions:

| SECTION | CHANGE (all for federal compliance) |
|-------------------|--|
| 124.19(b) | Update phone number |
| 260.11(a)(11) | Amend EPA mailing address |
| 261.3(a)(2) | Amend (iii) and (iv), [mixture/derived-from rule] |
| 261.3(c)(2) | Amend (i), add new (g) (1) - (3) and (h), [mixture/derived-from rule] |
| 261.4(b)(3) | Update State Mining Act |
| 261.32 Table | Add K174 and K175 in alphanumeric order [LDR] |
| 261.38(c)(2) | Add new (iv) [NESHAPS] |
| 261 Appendix VII | Add K174 and K175 in alphanumeric order [LDR] |
| 261 Appendix VIII | Add two chlorinated aliphatics listings [LDR] |
| 264.90(f) | Remove reference to alternative to permit |
| 264.340(b)(1) | Amend to add reference to (b)(3) |
| 264.340(b)(3) | Add new (b)(3) |
| 266 Subpart N | Add new Subpart N [low-level mixed wastes] |
| 268.32 | Add new subpart [LDR] |
| 268.33 | Add new subpart [LDR] |
| 268.40 | Amend F039 by adding five constituents, add K174 & K175; add footnote |
| [LDR]268.48(a) | Amend PCB listing with footnote; add five new organic constituent listings [LDR] |
| 268.49(d) | Amend [LDR] |
| 268 Appendix III | Add new appendix [LDR] |
| 270.42(j) | Amend (1) [NESHAPS] |

Instructions: Amend R.61-79 with each amendment provided with the text as follows:

Text of Amendment:

The following sections are added, deleted, or amended. All other sections remain.

R.61-79 Hazardous Waste Management

Amend 124.19(b)

(b) The request should be sent to: The Board of Health and Environmental Control, Attn: Clerk of the Board, Office of the Commissioner, 2600 Bull Street, Columbia, SC 29201, (803) 898-3300

Amend 260.11(a)(11)

(a) (11) "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846 [Third Edition (November 1986), as amended by Updates I, (dated July 1992), II (dated September 1994), IIA (dated August 1993), IIB (dated January 1995) and III] (dated December 1996) and IIIA (dated April 1998)]. The Third Edition of SW-846 and Updates I, II, IIA, IIB, and III (document number 955-001-0000-1) are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512-1800. Update IIIA is available through EPA's Methods Information Communication Exchange (MICE) Service. MICE can be contacted by phone at (703) 821-4690. Update IIIA can also be obtained by contacting the U.S. Environmental Protection Agency, Office of Solid Waste (5307W), OSW Methods Team, 1200 Pennsylvania Ave. NW, Washington, DC, 20460. Copies of the Third Edition and all of its updates are also available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 605-6000 or (800) 553-6847. Copies may be inspected at the Library, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC. (11/99; 8/00)

Amend 261.3(a)(2)(iii) and (iv) and (c)(2)(i); add (g) and (h).

261.3 Definition of hazardous waste

(a) A solid waste, as defined in 261.2, is a hazardous waste if: (11/99)

(2) It meets any of the following criteria:

(iii)[Reserved](11/90; 12/93)

(iv) It is a mixture of solid waste and one or more hazardous wastes listed in subpart D of this part and has not been excluded from this paragraph (a)(2) of this section under 260.20 and 260.22, paragraph (g) of this section, or paragraph (h) of this section; however, the following mixtures of solid wastes and hazardous wastes listed in subpart D of this part are not hazardous wastes (except by application of paragraph (a)(2) (i) or (ii) of this section) if the generator can demonstrate that the mixture consists of wastewater the discharge of which is subject to regulation under the S. C. Pollution Control Act Section 48-1-10 et seq., of the S. C. Code of Laws of 1976, as amended and under either section 402 or section 307(b) of the Clean Water Act (including wastewater at facilities which have eliminated the discharge of wastewater) and: (11/90; 12/93) [subsequent provisions are not changed]

(c) (2) (i) Except as otherwise provided in paragraph (c)(2)(ii), (g) or (h) of this section, any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate (but not including precipitation run-off) is a hazardous waste.

(g) (1) A hazardous waste that is listed in subpart D of this part solely because it exhibits one or more characteristics of ignitability as defined under 261.21, corrosivity as defined under 261.22, or reactivity as defined under 261.23 is not a hazardous waste, if the waste no longer exhibits any characteristic of hazardous waste identified in subpart C of this part.

(2) The exclusion described in paragraph (g)(1) of this section also pertains to:

(i) Any mixture of a solid waste and a hazardous waste listed in subpart D of this part solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as regulated under paragraph (a)(2)(iv) of this section; and

(ii) Any solid waste generated from treating, storing, or disposing of a hazardous waste listed in subpart D of this part solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as regulated under paragraph (c)(2)(i) of this section.

(3) Wastes excluded under this section are subject to part 268 of this chapter (as applicable), even if they no longer exhibit a characteristic at the point of land disposal.

70 FINAL REGULATIONS

(h) (1) Hazardous waste containing radioactive waste is no longer a hazardous waste when it meets the eligibility criteria and conditions of 266, Subpart N ("eligible radioactive mixed waste").

(2) The exemption described in paragraph (h)(1) of this section also pertains to:

(i) Any mixture of a solid waste and an eligible radioactive mixed waste; and

(ii) Any solid waste generated from treating, storing, or disposing of an eligible radioactive mixed waste.

(3) Waste exempted under this section must meet the eligibility criteria and specified conditions in 266.225 and 266.230 (for storage and treatment). Waste that fails to satisfy these eligibility criteria and conditions is regulated as hazardous waste.

Amend 261.4(b):

261.4(b)(3) Mining overburden returned to the mine site if such overburden is handled in compliance with all applicable provisions of the S. C. Mining Act, Section 48-20-10 et seq., S. C. Code of Laws, 1976, as amended.

Insert new listings K174 and K175 in alphanumeric order at 261.32 Hazardous wastes from specific sources

| Industry & EPA HW # | 261.32 Hazardous Wastes from specific sources | Hazard code |
|---------------------|--|-------------|
| Organic chemicals: | | |
| K174 | Wastewater treatment sludges from the production of ethylene dichloride or vinyl chloride monomer (including sludges that result from commingled ethylene dichloride or vinyl chloride monomer wastewater and other wastewater), unless the sludges meet the following conditions: (i) they are disposed of in a subtitle C or non-hazardous landfill licensed or permitted by the state or federal government; (ii) they are not otherwise placed on the land prior to final disposal; and (iii) the generator maintains documentation demonstrating that the waste was either disposed of in an on-site landfill or consigned to a transporter or disposal facility that provided a written commitment to dispose of the waste in an off-site landfill. Respondents in any action brought to enforce the requirements of subtitle C must, upon a showing by the government that the respondent managed wastewater treatment sludges from the production of vinyl chloride monomer or ethylene dichloride, demonstrate that they meet the terms of the exclusion set forth above. In doing so, they must provide appropriate documentation (e.g., contracts between the generator and the landfill owner/operator, invoices documenting delivery of waste to landfill, etc.) that the terms of the exclusion were met. (7/02) | (T) |
| K175 | Wastewater treatment sludges from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process. (7/02) | (T) |

Add new 261.38 (c)(2)(iv) Comparable/Syngas Fuel Exclusion.

(c) (2)(iv) Gas turbines used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale

Insert two new "K" wastes in alphanumeric order at 261 Appendix VII:

| 261 Appendix VII Basis for Listing Hazardous Waste | |
|--|--|
| EPA hazardous waste # | Hazardous constituents for which listed |
| K174 | 1,2,3,4,6,7,8-Heptachlorodibenzo-p-dioxin (1,2,3,4,6,7,8-HpCDD), 1,2,3,4,6,7,8-Heptachlorodibenzofuran (1,2,3,4,6,7,8-HpCDF), 1,2,3,4,7,8,9- Heptachlorodibenzofuran (1,2,3,6,7,8,9-HpCDF), HxCDDs (All Hexachlorodibenzo-p- dioxins), HxCDFs (All |

| | |
|------|--|
| | Hexachlorodibenzofurans), PeCDDs (All Pentachlorodibenzo-p-dioxins), OCDD (1,2,3,4,6,7,8,9-Octachlorodibenzo-p-dioxin, OCDF (1,2,3,4,6,7,8,9-Octachlorodibenzofuran), PeCDFs (All Pentachlorodibenzofurans), TCDDs (All tetrachlorodi-benzo- p-dioxins), TCDFs (All tetrachlorodibenzofurans). |
| K175 | Mercury |

Insert two new chlorinated aliphatics listings in alphabetical order at 261 Appendix VIII:

| 261 Appendix VIII Hazardous Constituents | | |
|--|---|------------|
| Common name | Chemical abstracts name (9/98, 7/02). | CAS # |
| Octachlorodibenzo-p-dioxin (OCDD) | 1,2,3,4,6,7,8,9-Octachlorodibenzo-p-dioxin (7/02) | 3268-87-9 |
| Octachlorodibenzofuran(OCDF) | 1,2,3,4,6,7,8,9-Octachlorodibenzofuran (7/02) | 39001-02-0 |

¹The abbreviation N.O.S. (not otherwise specified) signifies those members of the general class not specifically listed by name in this appendix.

Amend 264.90(f)

264.90 (f) The Department may replace all or part of the requirements of 264.91 through 264.100 applying to a regulated unit with alternative requirements for groundwater monitoring and corrective action for releases to groundwater set out in the permit (as defined in 270.1(c)(7)) where the Department determines that: (8/00)

Amend 264.340(b)(1); add new (3)

(1) Except as provided by paragraphs (b)(2) and (b)(3), the standards of this part no longer apply when an owner or operator demonstrates compliance with the maximum achievable control technology (MACT) requirements of part 63, subpart EEE of this chapter by conducting a comprehensive performance test and submitting to the Department a Notification of Compliance under 63.1207(j) and 63.1210(d) of this chapter documenting compliance with the requirements of part 63, subpart EEE of this chapter. Nevertheless, even after this demonstration of compliance with the MACT standards, RCRA permit conditions that were based on the standards of this part will continue to be in effect until they are removed from the permit or the permit is terminated or revoked, unless the permit expressly provides otherwise.

(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 of part 63.1206(b)(14).

Add new 266 Subpart N Conditional Exemption for Low-Level Mixed Waste

Terms

266.210 What definitions apply to this subpart?

This subpart uses the following special definitions:

Agreement State means a state that has entered into an agreement with the NRC under subsection 274b of the Atomic Energy Act of 1954, as amended (68 Stat. 919), to assume responsibility for regulating within its borders byproduct, source, or special nuclear material in quantities not sufficient to form a critical mass.

Certified delivery means certified mail with return receipt requested, or equivalent courier service, or other means, that provides the sender with a receipt confirming delivery.

72 FINAL REGULATIONS

Exempted waste means a waste that meets the eligibility criteria in 266.225 and meets all of the conditions in 266.230, or meets the eligibility criteria in 266.310. Such waste is conditionally exempted from the regulatory definition of hazardous waste described in 261.3.

License means a license issued by the Nuclear Regulatory Commission, or NRC Agreement State, to users that manage radionuclides regulated by NRC, or NRC Agreement States, under authority of the Atomic Energy Act of 1954, as amended.

Low-Level Mixed Waste (LLMW) is a waste that contains both low-level radioactive waste and RCRA hazardous waste.

Low-Level Radioactive Waste (LLW) is a radioactive waste which contains source, special nuclear, or byproduct material, and which is not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in section 11e.(2) of the Atomic Energy Act. (See also NRC definition of "waste" at 10 CFR 61.2)

Mixed Waste means a waste that contains both RCRA hazardous waste and source, special nuclear, or byproduct material subject to the Atomic Energy Act of 1954, as amended.

Naturally Occurring and/or Accelerator-produced Radioactive Material (NARM) means radioactive materials that: (1) Are naturally occurring and are not source, special nuclear, or byproduct materials (as defined by the AEA) or (2) Are produced by an accelerator. NARM is regulated by the States under State law, or by DOE (as authorized by the AEA) under DOE orders.

NRC means the U. S. Nuclear Regulatory Commission.

We or us within this subpart, means the Director of the Division of Waste Management

You means a generator of low-level mixed waste or eligible NARM.

Storage and Treatment Conditional Exemption and Eligibility

266.220 What does a storage and treatment conditional exemption do?

The storage and treatment conditional exemption exempts your low-level mixed waste from the regulatory definition of hazardous waste in 261.3 if your waste meets the eligibility criteria in 266.225 and you meet the conditions in 266.230.

266.225 What wastes are eligible for the storage and treatment conditional exemption?

Low-level mixed waste (LLMW), defined in 266.210, is eligible for this conditional exemption if it is generated and managed by you under a single NRC or NRC Agreement State license. (Mixed waste generated at a facility with a different license number and shipped to your facility for storage and treatment requires a permit and is ineligible for this exemption. In addition, NARM waste is ineligible for this exemption.)

266.230 What conditions must you meet for your LLMW to qualify for and maintain a storage and treatment exemption?

(a) For your LLMW to qualify for the exemption you must notify the Director of the Division of Waste Management in writing by certified delivery that you are claiming a conditional exemption for the LLMW stored on your facility. The dated notification must include your name, address, RCRA identification number, NRC or NRC Agreement State license number, the waste code(s) and storage unit(s) for which you are seeking an exemption, and a statement that you meet the conditions of this subpart. Your notification must be signed by your authorized representative who certifies that the information in the notification is true, accurate, and complete. You must notify the Director of your claim either within 90 days of the effective date of this rule in your State, or within 90 days of when a storage unit is first used to store conditionally exempt LLMW.

(b) To qualify for and maintain an exemption for your LLMW you must:

(1) Store your LLMW waste in tanks or containers in compliance with the requirements of your license that apply to the proper storage of low-level radioactive waste (not including those license requirements that relate solely to recordkeeping);

(2) Store your LLMW in tanks or containers in compliance with chemical compatibility requirements of a tank or container in 264.177 or 264.199 or 265.177 or 265.199;

(3) Certify that facility personnel who manage stored conditionally exempt LLMW are trained in a manner that ensures that the conditionally exempt waste is safely managed and includes training in chemical waste management and hazardous materials incidents response that meets the personnel training standards found in 265.16(a)(3);

(4) Conduct an inventory of your stored conditionally exempt LLMW at least annually and inspect it at least quarterly for compliance with subpart N of this part; and

(5) Maintain an accurate emergency plan and provide it to all local authorities who may have to respond to a fire, explosion, or release of hazardous waste or hazardous constituents. Your plan must describe emergency response arrangements with local authorities; describe evacuation plans; list the names, addresses, and telephone numbers of all facility personnel qualified to work with local authorities as emergency coordinators; and list emergency equipment.

266.235 What waste treatment does the storage and treatment conditional exemption allow?

You may treat your low-level mixed waste at your facility within a tank or container in accordance with the terms of your NRC or NRC Agreement State license. Treatment that cannot be done in a tank or container without a RCRA permit (such as incineration) is not allowed under this exemption.

Loss of Conditional Exemption

266.240 How could you lose the conditional exemption for your LLMW and what action must you take?

(a) Your LLMW will automatically lose the storage and treatment conditional exemption if you fail to meet any of the conditions specified in 266.230. When your LLMW loses the exemption, you must immediately manage that waste which failed the condition as RCRA hazardous waste, and the storage unit storing the LLMW immediately becomes subject to RCRA hazardous waste container and/or tank storage requirements.

(1) If you fail to meet any of the conditions specified in 266.230 you must report to the Director of the Division of Waste Management and the oversight agency in the NRC Agreement State, in writing by certified delivery within 30 days of learning of the failure. Your report must be signed by your authorized representative certifying that the information provided is true, accurate, and complete. This report must include:

(i) The specific condition(s) you failed to meet;

(ii) A description of the LLMW (including the waste name, hazardous waste codes and quantity) and storage location at the facility; and

(iii) The date(s) on which you failed to meet the condition(s).

(2) If the failure to meet any of the conditions may endanger human health or the environment, you must also immediately notify the Director of the Division of Waste Management orally within 24 hours and follow up with a written notification within five days. Failures that may endanger human health or the environment include, but are not limited to, discharge of a CERCLA reportable quantity or other leaking, burning or exploding tanks or containers, or detection of radionuclides above background or hazardous constituents in the leachate collection system of a storage area. If the failure may endanger human health or the environment, you must follow the provisions of your emergency plan.

(b) We may terminate your conditional exemption for your LLMW, or require you to meet additional conditions to claim a conditional exemption, for serious or repeated noncompliance with any requirement(s) of subpart N of this part.

266.245 If you lose the storage and treatment conditional exemption for your LLMW, can the exemption be reclaimed?

(a) You may reclaim the storage exemption for your LLMW if:

(1) You again meet the conditions specified in 266.230; and

74 FINAL REGULATIONS

(2) You send the Director of the Division of Waste Management a notice by certified delivery that you are reclaiming the exemption for your LLMW. Your notice must be signed by your authorized representative certifying that the information contained in your notice is true, complete, and accurate. In your notice you must do the following:

- (i) Explain the circumstances of each failure.
- (ii) Certify that you have corrected each failure that caused you to lose the exemption for your LLMW and that you again meet all the conditions as of the date you specify.
- (iii) Describe plans that you have implemented, listing specific steps you have taken, to ensure the conditions will be met in the future.
- (iv) Include any other information you want us to consider when we review your notice reclaiming the exemption.

(b) We may terminate a reclaimed conditional exemption if we find that your claim is inappropriate based on factors including, but not limited to, the following: you have failed to correct the problem; you explained the circumstances of the failure unsatisfactorily; or you failed to implement a plan with steps to prevent another failure to meet the conditions of 266.230. In reviewing a reclaimed conditional exemption under this section, we may add conditions to the exemption to ensure that waste management during storage and treatment of the LLMW will protect human health and the environment.

Recordkeeping

266.250 What records must you keep at your facility and for how long?

(a) In addition to those records required by your NRC or NRC Agreement State license, you must keep records as follows:

- (1) Your initial notification records, return receipts, reports to us of failure(s) to meet the exemption conditions, and all records supporting any reclaim of an exemption;
- (2) Records of your LLMW annual inventories, and quarterly inspections;
- (3) Your certification that facility personnel who manage stored mixed waste are trained in safe management of LLMW including training in chemical waste management and hazardous materials incidents response; and
- (4) Your emergency plan as specified in 266.230(b).

(b) You must maintain records concerning notification, personnel trained, and your emergency plan for as long as you claim this exemption and for three years thereafter, or in accordance with NRC regulations under 10 CFR part 20 (or equivalent NRC Agreement State regulations), whichever is longer. You must maintain records concerning your annual inventory and quarterly inspections for three years after the waste is sent for disposal, or in accordance with NRC regulations under 10 CFR part 20 (or equivalent NRC Agreement State regulations), whichever is longer.

Reentry Into RCRA

266.255 When is your LLMW no longer eligible for the storage and treatment conditional exemption?

(a) When your LLMW has met the requirements of your NRC or NRC Agreement State license for decay-in-storage and can be disposed of as non-radioactive waste, then the conditional exemption for storage no longer applies. On that date your waste is subject to hazardous waste regulation under the relevant sections of parts 260 through 271, and the time period for accumulation of a hazardous waste as specified in 262.34 begins.

(b) When your conditionally exempt LLMW, which has been generated and stored under a single NRC or NRC Agreement State license number, is removed from storage, it is no longer eligible for the storage and treatment exemption.

Storage Unit Closure

266.260 Do closure requirements apply to units that stored LLMW prior to the effective date of Subpart N?

Interim status and permitted storage units that have been used to store only LLMW prior to the effective date of Subpart N and, after that date, store only LLMW which becomes exempt under this Subpart N, are not subject to the closure requirements of parts 264 and 265. Storage units (or portions of units) that have been used to store both LLMW and non-mixed hazardous waste prior to the effective date of Subpart N or are used to store both after that date remain subject to closure requirements with respect to the non-mixed hazardous waste.

266.305 - 266.360 [Reserved]

Insert new 268.32 and 268.33 Waste specific prohibitions

268.32 Soils exhibiting the toxicity characteristic for metals and containing PCBs.

(a) Effective December 26, 2000, the following wastes are prohibited from land disposal: any volumes of soil exhibiting the toxicity characteristic solely because of the presence of metals (D004 - D011) and containing PCBs.

(b) The requirements of paragraph (a) of this section do not apply if:

(1) (i) The wastes contain halogenated organic compounds in total concentration less than 1,000 mg/kg; and

(ii) The wastes meet the treatment standards specified in Subpart D of this part for EPA hazardous waste numbers D004 - D011, as applicable; or

(2) (i) The wastes contain halogenated organic compounds in total concentration less than 1,000 mg/kg; and

(ii) The wastes meet the alternative treatment standards specified in 268.49 for contaminated soil; or
(3) Persons have been granted an exemption from a prohibition pursuant to a petition under 268.6, with respect to those wastes and units covered by the petition; or

(4) The wastes meet applicable alternative treatment standards established pursuant to a petition granted under 268.44.

268.33 Waste-specific prohibitions - chlorinated aliphatic wastes.

(a) Effective May 8, 2001, the wastes specified in part 261 as EPA Hazardous Wastes Numbers K174, and K175, soil and debris contaminated with these wastes, radioactive wastes mixed with these wastes, and soil and debris contaminated with radioactive wastes mixed with these wastes are prohibited from land disposal.

(b) The requirements of paragraph (a) of this section do not apply if:

(1) The wastes meet the applicable treatment standards specified in subpart D of this part;
(2) Persons have been granted an exemption from a prohibition pursuant to a petition under 268.6, with respect to those wastes and units covered by the petition;

(3) The wastes meet the applicable treatment standards established pursuant to a petition granted under 268.44;

(4) Hazardous debris has met the treatment standards in 268.40 or the alternative treatment standards in 268.45; or

(5) Persons have been granted an extension to the effective date of a prohibition pursuant to 268.5, with respect to these wastes covered by the extension.

(c) To determine whether a hazardous waste identified in this section exceeds the applicable treatment standards specified in 268.40, the initial generator must test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains regulated constituents in excess of the applicable levels of subpart D of this part, the waste is prohibited from land disposal, and all requirements of part 268 are applicable, except as otherwise specified.

(d) Disposal of K175 wastes that have complied with all applicable 268.40 treatment standards must also be macroencapsulated in accordance with 268.45 Table 1 unless the waste is placed in:

(1) A Subtitle C monofill containing only K175 wastes that meet all applicable 268.40 treatment standards; or

76 FINAL REGULATIONS

- (2) A dedicated Subtitle C landfill cell in which all other wastes being co-disposed are at pH 6.0.

Add five constituents to F039, and new K174 and K175 at 268.40 Treatment Standards for Hazardous Wastes; add new footnote 12

268.40 Applicability of treatment standards.
 "Treatment Standards for Hazardous Wastes"

| WASTE CODE | WASTE DESCRIPTION AND TREATMENT/REGULATORY SUBCATEGORY ¹ (11/99, 8/00) NOTE: NA means not applicable; fb means followed by | REGULATED HAZARDOUS CONSTITUENT | | WASTEWATERS | NON WASTEWATERS |
|------------|--|--|-------------------------|--|--|
| | | Common Name | CAS ² Number | Concentration in mg/l ³ ; or Technology Code ⁴ | Concentration in mg/kg ⁵ unless noted as "mg/l TCLP"; or Technology Code ⁴ |
| F039 | Leachate (liquids that have percolated through land disposed wastes) resulting from the disposal of more than one restricted waste classified as hazardous under Subpart D. (Leachate resulting from the disposal of one or more of the following hazardous wastes and no other hazardous waste retains its EPA hazardous waste number(s): F020, F021, F022, F026, F027, and F028) | ***** | | | |
| | | 1, 2, 3, 4, 6, 7, 8-Heptachlorodibenzo-p-dioxin (1, 2, 3, 4, 6, 7, 8 HpCDD) | 35822-46-9 | 0.000035 | 0.0025 |
| | | 1,2,3,4,6,7,8-Heptachlorodibenzofuran (1,2,3,4,6,7,8-HpCDF) | 67562-39-4 | 0.000035 | 0.0025 |
| | | 1,2,3,4,7,8,9-Heptachlorodibenzofuran (1,2,3,4,7,8,9-HpCDF) | 55673-89-7 | 0.000035 | 0.0025 |
| | | 1,2,3,4,6,7,8,9-Octachlorodibenzo-p-dioxin (OCDD) | 3268-87-9 | 0.000063 | 0.0025 |
| | | 1,2,3,4,6,7,8,9-Octachlorodibenzofuran (OCDF) | 39001-02-0 | 0.000063 | 0.005 |
| K174 | Wastewater treatment sludges from the production of ethylene dichloride or vinyl chloride monomer | 1, 2, 3, 4, 6, 7, 8-Heptachlorodibenzo-p-dioxin (1, 2, 3, 4, 6, 7, 8 HpCDD) | 35822-46-9 | 0.000035 or CMBST ¹¹ | 0.0025 or CMBST ¹¹ |
| | | 1,2,3,4,6,7,8-Heptachlorodibenzofuran (1,2,3,4,6,7,8-HpCDF) | 67562-39-4 | 0.000035 or CMBST ¹¹ | 0.0025 or CMBST ¹¹ |
| | | 1,2,3,4,7,8,9-Heptachlorodibenzofuran (1,2,3,4,7,8,9-HpCDF) | 55673-89-7 | 0.000035 or CMBST ¹¹ | 0.0025 or CMBST ¹¹ |

78 FINAL REGULATIONS

| | | | | | |
|------|---|---|------------|---------------------------------|------------------------------|
| | | HxCDDs (All Hexachlorodibenzo-p-dioxins) | 34465-46-8 | 0.000063 or CMBST ¹¹ | 0.001 or CMBST ¹¹ |
| | | HxCDFs (All Hexachlorodibenzofurans) | 55684-94-1 | 0.000063 or CMBST ¹¹ | 0.001 or CMBST ¹¹ |
| | | 1,2,3,4,6,7,8,9-Octachlorodibenzo-p-dioxin (OCDD) | 3268-87-9 | 0.000063 or CMBST ¹¹ | 0.005 or CMBST ¹¹ |
| | | 1,2,3,4,6,7,8,9-Octachlorodibenzofuran (OCDF) | 39001-02-0 | 0.000063 or CMBST ¹¹ | 0.005 or CMBST ¹¹ |
| | | PeCDDs (All Pentachlorodibenzo-p-dioxins) | 36088-22-9 | 0.000063 or CMBST ¹¹ | 0.001 or CMBST ¹¹ |
| | | PeCDFs (All Pentachlorodibenzofurans) | 30402-15-4 | 0.000035 or CMBST ¹¹ | 0.001 or CMBST ¹¹ |
| | | TCDDs (All tetrachlorodibenzo-p-dioxins) | 41903-57-5 | 0.000063 or CMBST ¹¹ | 0.001 or CMBST ¹¹ |
| | | TCDFs (All tetrachlorodibenzofurans) | 7440-36-0 | 1.4 | 5.0mg/L TCLP |
| K175 | Wastewater treatment sludge from the production of vinyl chloride monomer using mercuric chloride catalyst in an acetylene-based process. | Mercury ¹² | 7438-97-6 | NA | 0.025 mg/L TCLP |
| | | pH ¹² | | NA pH≤6.0 | |
| | | All K175 wastewaters | Mercury | 7438-97-6 | 0.15 |

Add Footnote 12 to Treatment Standard Table 268.40

(12) Disposal of K175 wastes that have complied with all applicable 268.40 treatment standards must also be macroencapsulated in accordance with 268.45 Table 1 unless the waste is placed in:

- (1) A Subtitle C monofill containing only K175 wastes that meet all applicable 268.40 treatment standards; or
- (2) A dedicated Subtitle C landfill cell in which all other wastes being co-disposed are at pH 6.0.

Amend 268.48 Universal Treatment Standards: amend Total PCBs; Insert five new organic constituent listings; amend footnote 8.

(a) Table UTS identifies the hazardous constituents, along with the nonwastewater and wastewater treatment standard levels, that are used to regulate most prohibited hazardous wastes with numerical limits. For determining compliance with treatment standards for underlying hazardous constituents as defined in 268.2(i), these treatment standards may not be exceeded. Compliance with these treatment standards is measured by an analysis of grab samples, unless otherwise noted in the following Table UTS.

| Regulated Constituent Common Name | CAS No. | Wastewater standard | Nonwastewater standard |
|---|------------|---------------------|------------------------|
| Total PCBs (sum of all PCB isomers, or all Arcolors) ⁸ | 1336-36-3 | 0.10 | 10.0 |
| Organic Constituents | | | |
| 1,2,3,4,6,7,8-Heptachlorodibenzo-p-dioxin(1,2,3,4,6,7,8-HpCDD) | 35822-46-9 | 0.000035 | 0.0025 |
| 1,2,3,4,6,7,8-Heptachlorodibenzofuran (1,2,3,4,6,7,8-HpCDF) | 67562-39-4 | 0.000035 | 0.0025 |
| 1,2,3,4,7,8,9-Heptachlorodibenzofuran (1,2,3,4,7,8,9-HpCDF) | 55673-89-7 | 0.000035 | 0.0025 |
| ***** | | | |
| 1,2,3,4,6,7,8,9-Octachlorodibenzo-p-dioxin (OCDD) | 3268-87-9 | 0.000063 | 0.005 |
| 1,2,3,4,6,7,8,9-Octachlorodibenzofuran (OCDF) | 39001-02-0 | 0.000063 | 0.005 |

⁸ This standard is temporarily deferred for soil exhibiting a hazardous characteristic due to D004-D011 only

Amend 268.49 (d) Alternative LDR treatment standards for contaminated soil.

(d) Constituents subject to treatment. When applying the soil treatment standards in paragraph (c) of this section, constituents subject to treatment are any constituents listed in 268.48 Table UTS-Universal Treatment Standards that are reasonably expected to be present in any given volume of contaminated soil, except fluoride, selenium, sulfides, vanadium, zinc, and that are present at concentrations greater than ten times the universal treatment standard. PCBs are not constituent subject to treatment in any given volume of soil which exhibits the toxicity characteristic solely because of the presence of metals.

Add new 268 Appendix III List of Halogenated Organic Compounds Regulated Under 268.32**268 Appendix III - List of Halogenated Organic Compounds Regulated Under 268.32**

In determining the concentration of HOCs in a hazardous waste for purposes of the 268.32 land disposal prohibition, EPA has defined the HOCs that must be included in a calculation as any compounds having a carbon-halogen bond which are listed in this Appendix (see 268.2). 268 Appendix III consists of the following compounds:

80 FINAL REGULATIONS

I. Volatiles

1. Bromodichloromethane
2. Bromomethane
3. Carbon Tetrachloride
4. Chlorobenzene
5. 2-Chloro-1,3-butadiene
6. Chlorodibromomethane
7. Chloroethane
8. 2-Chloroethyl vinyl ether
9. Chloroform
10. Chloromethane
11. 3-Chloropropene
12. 1,2-Dibromo-3-chloropropane
13. 1,2-Dibromomethane
14. Dibromomethane
15. Trans-1,4-Dichloro-2-Butene
16. Dichlorodifluoromethane
17. 1,1-Dichloroethane
18. 1,2-Dichloroethane
19. 1,1-Dichloroethylene
20. Trans-1,2-Dichloroethene
21. 1,2-Dichloropropane
22. Trans-1,3-Dichloropropene
23. cis-1,3-Dichloropropene
24. Iodomethane
25. Methylene chloride
26. 1,1,1,2-Tetrachloroethane
27. 1,1,2,2-Tetrachloroethane
28. Tetrachloroethene
29. Tribromomethane
30. 1,1,1-Trichloroethane
31. 1,1,2-Trichloroethane
32. Trichloroethene
33. Trichloromonofluoromethane
34. 1,2,3-Trichloropropane
35. Vinyl Chloride

II. Semivolatiles

1. Bis(2-chloroethoxy)ethane
2. Bis(2-chloroethyl)ether
3. Bis(2-chloroisopropyl)ether
4. p-Chloroaniline
5. Chlorobenzilate
6. p-Chloro-m-cresol
7. 2-Chloronaphthalene
8. 2-Chlorophenol
9. 3-Chloropropionitrile
10. m-Dichlorobenzene
11. o-Dichlorobenzene
12. p-Dichlorobenzene
13. 3,3'-Dichlorobenzidine
14. 2,4-Dichlorophenol
15. 2,6-Dichlorophenol

16. Hexachlorobenzene
17. Hexachlorobutadiene
18. Hexachlorocyclopentadiene
19. Hexachloroethane
20. Hexachloroprophene
21. Hexachlorpropene
22. 4,4'-Methylenebis(2-chloroaniline)
23. Pentachlorobenzene
24. Pentachloroethane
25. Pentachloronitrobenzene
26. Pentachlorophenol
27. Pronamide
28. 1,2,4,5-Tetrachlorobenzene
29. 2,3,4,6-Tetrachlorophenol
30. 1,2,4-Trichlorobenzene
31. 2,4,5-Trichlorophenol
32. 2,4,6-Trichlorophenol
33. Tris(2,3-dibromopropyl)phosphate

III. Organochlorine Pesticides

1. Aldrin
2. alpha-BHC
3. beta-BHC
4. delta-BHC
5. gamma-BHC
6. Chlorodane
7. DDD
8. DDE
9. DDT
10. Dieldrin
11. Endosulfan I
12. Endosulfan II
13. Endrin
14. Endrin aldehyde
15. Heptachlor
16. Heptachlor epoxide
17. Isodrin
18. Kepone
19. Methoxychlor
20. Toxaphene

IV. Phenoxyacetic Acid Herbicides

1. 2,4-Dichlorophenoxyacetic acid
2. Silvex
3. 2,4,5-T

V. PCBs

1. Aroclor 1016
2. Aroclor 1221
3. Aroclor 1232
4. Aroclor 1242
5. Aroclor 1248
6. Aroclor 1254

82 FINAL REGULATIONS

7. Aroclor 1260
8. PCBs not otherwise specified

VI. Dioxins and Furans

1. Hexachlorodibenzo-p-dioxins
2. Hexachlorodibenzofuran
3. Pentachlorodibenzo-p-dioxins
4. Pentachlorodibenzofuran
5. Tetrachlorodibenzo-p-dioxins
6. Tetrachlorodibenzofuran
7. 2,3,7,8-Tetrachlorodibenzo-p-dioxin

Amend 270.42(j)(1) Permit modification at the request of the permittee.

(j) (1) Facility owners or operators must have complied with the Notification of Intent to Comply (NIC) requirements of 40 CFR 63.121 that was in effect prior to May 14, 2001, in order to request a permit modification under this section.

Statement of Need and Reasonableness:

This Statement of Need and Reasonableness complies with S. C. Code Ann. Section 1-23-115(C)(1)-(3) and (9)-(11).

DESCRIPTION OF REGULATION: Amendment of R.61-79 Hazardous Waste Management Regulations

Purpose: The purpose of this amendment is to meet compliance requirements of the United States Environmental Protection Agency (EPA), which promulgates amendments to 40 CFR 124, 260 through 266, 268, 270, and 273 throughout each calendar year by publication in the Federal Register. Recent federal amendments which the Department is proposing to amend include the following: clarification of final standards for hazardous air pollutants for hazardous waste combustors, listing of two chlorinated aliphatics production wastewater treatment sludges (K174 and K175) including a contingent-management listing approach; increased flexibility to certain facilities that store and treat low-level mixed radioactive and hazardous wastes; the temporary deferral of PCB treatment standards for metal contaminated soils; revisions to the mixture and derived-from rules, and other minor amendments. In addition, minor typographical and other minor errors have been corrected to achieve conformity with federal regulations. These rules and other amendments were published in the Federal Register between July 1, 2000 and June 30, 2001.

These amendments appeared at 65 FR 42292 and 66 FR 24270 published July 10, 2000 and May 14, 2001; 65 FR 67068 published November 8, 2000; 65 FR 81373 published December 26, 2000; 66 FR 27218 published May 16, 2001; 66 FR 27266 published May 16, 2001; and 66 FR 37374 published June 28, 2001.

Legal Authority: S. C. Code Ann. Section 44-56-30, the Hazardous Waste Management Act, to facilitate the Resource Conservation and Recovery Act of 1976 as amended.

Plan for Implementation: Upon final approval by the Board of Health and Environmental Control and publication in the State Register as a final regulation, amended regulations will be provided to the community at cost through the Department's Freedom of Information Office.

DETERMINATION OF NEED AND REASONABLENESS OF THE REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS: Adoption of the amendments and corrections to R.61-79 will enable compliance with recent federal amendments. See Purpose above.

DETERMINATION OF COSTS AND BENEFITS: This regulatory amendment is exempt from the requirements of a Preliminary Fiscal Impact Statement or a Preliminary Assessment Report because the changes are necessary to maintain compliance with federal regulations. EPA estimated costs and benefits of the various amendments are summarized below. The summaries are taken from the cited Federal Register notices. A significant regulatory action is defined as one that (5/26/98 in 63 FR 28630) "is likely to result in a rule that may: (1) have an annual effect on the economy of \$100 million or more or adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements...; or (4) raise novel legal or policy issues arising out of legal mandates..."

EPA reports that the new listings of two chlorinated aliphatics wastes do not meet the test for "a significant regulatory action." The LLMW rule, the temporary deferral of PCB treatment standards for metal contaminated soils, and the amendments to the mixture and derived-from rule offer alternative strategies for complying with existing rules and therefore offer opportunities for cost savings.

UNCERTAINTIES OF ESTIMATES: No known uncertainties.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: The over-all effects of these rules are expected to be beneficial to the public health and environment and also reflect federal provisions in State law.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED: The State's authority to implement federal requirements, which are believed to be beneficial to the public health and environment, would be compromised if these amendments are not adopted in South Carolina.

Document No. 2715
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
 CHAPTER 61
 Statutory Authority: S.C. Code Section 44-93-10 et seq.

R.61-105. Infectious Waste Management Regulations

Synopsis:

The purpose of this amendment is to: (1) Amend Regulation 61-105 by deleting the language under Section DD, Fees Section, that states generators and transporters must pay a \$25.00 processing fee. (2) Simplify registration requirements, small and regular generators must register every 3 years with the Department. (3) Develop updated infectious waste standards for generators, transporters, transfer stations and treatment facilities.

See Discussion of Revisions below and Statement of Need and Reasonableness herein.

Discussion of Revisions:

| <u>SECTION</u> | <u>CHANGE</u> |
|----------------|--|
| 61-105.E(1)(f) | Grammatical change. Replaced wording "wastes" to "waste". |
| 61-105.F(3) | Revised to add "all" to "for all generators" and delete the phrase "and every five (5) years for small quantity generators." To streamline and simplify invoice requirements for |

84 FINAL REGULATIONS

consistency by the Department, small and regular generators will register every 3 years with the Department instead of every 3 and 5 years.

61-105.F(4) Deleted existing language “Fees Section of this regulation” and added “Environmental Protection Fees, Regulation 61-30.”

61-105.F(6)(i) Added a new subsection (i) “weigh waste prior to sending off-site for disposal and maintain monthly generation rates in the facility operating record.”

61-105.M(1)c Revised to add the wording “and the weight”.

61-105.O(2) Deleted existing language “Fees Section of this regulation” and added “Environmental Protection Fees, Regulation 61-30.”

61-105.O(2)(c) Added a new subsection (c) “A registration may be terminated or a new or renewal application may be denied by the Department for noncompliance by the transporter with any conditions of the registration, requirements of this regulation, or the Act.”

61-105.S Deleted text of whole section and replaced with the word “Reserved” because this requirement is burdensome to the regulated community and has not been beneficial to the Program.

61-105.W(9) Revised to add “or the Act.”

61-105.X(2)(a) Revised to add “the Act and” for clarification.

61-105.DD Deleted all existing language and added “Fees are outlined in the Environmental Protection Fees, Regulation 61-30.” Since new transporter and generator fees became effective in the Environmental Protection Fees, Regulation 61-30, it was necessary to remove the old fees from Section DD.

61-105.EE Deleted whole section.

Instructions: Amend R.61-105 pursuant to each individual instruction provided below with the text of the amendments.

Text of Amendment:

Replace 61-105.E(1)(f) “Wastes” to read:

(f) “Isolation Waste.”

Revise 61-105.F(3) to read:

(3) “Renewal of registration will be every three (3) years for all generators. Registered generators will be notified of renewal requirements by the Department.”

Revise 61-105.F(4) to read:

“Fees for registration will be due at the time of registration and renewal. Fees will be assessed as outlined in the Environmental Protection Fees, Regulation 61-30.”

Add a new subsection 61-105.F(6)(i) to read:

(i) “weigh waste prior to sending off-site for disposal and maintain monthly generation rates in the facility operating record.”

Add 61-105.M(1)(c) to read:

(c) “the number of containers of waste and the weight (accurate to within one (1) percent);”

Revise 61-105.O(2) to read:

“No person shall engage or continue to engage in transportation of infectious waste (except as outlined in Section N(2)) in South Carolina unless they register annually with the Department as an infectious waste transporter, and pay applicable fees as outlined in the Environmental Protection Fees, Regulation 61-30.”

Add new subsection 61-105.O(2)(c) to read:

(c) “A registration may be terminated or a new or renewal application may be denied by the Department for noncompliance by the transporter with any conditions of the registration, requirements of this regulation, or the Act.”

Delete all existing language in 61-105.S and add language to read:

61-105.S. “Reserved.”

Revise 61-105.W(9) to read:

(9) “A permit may be terminated or a new or renewal application may be denied by the Department for noncompliance by the permittee with any conditions of the permit, requirements of this regulation, or the Act.”

Revise 61-105.X(2)(a) to read:

“comply with all parts of the Act and this regulation except permitting procedures of Section W.”

Revise 61-105.DD to read:

“Fees are outlined in the Environmental Protection Fees, Regulation 61-30.”

Delete 61-105.EE.

EE. Effective Date.

This regulation shall be effective ninety (90) days after the date of publication of the Final Regulation in the State Register.

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:

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

86 FINAL REGULATIONS

DESCRIPTION OF REGULATION:

Purpose of Regulation: The purpose of this amendment is to: (1) Amend Regulation 61-105 by deleting the language under Section DD, Fees Section, that states generators and transporters must pay a \$25.00 processing fee. (2) Simplify registration requirements, small and regular generators must register every 3 years with the Department. (3) Develop updated infectious waste standards for generators, transporters, transfer stations and treatment facilities.

Legal Authority: The State Primary Infectious Waste Management Regulations are authorized by S.C. Code Section 44-93-10 et seq., State Infectious Waste Management Act.

Plan for Implementation: This amendment will make changes to and be incorporated into R.61-105 upon approval of the Board of Health and Environmental Control, the General Assembly, and publication in the State Register. These amendments will be implemented in the same manner in which the existing regulations are implemented.

DETERMINATION OF NEED AND REASONABLENESS OF THE REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS: Since Regulation 61-105 was last amended, new Infectious Waste Generator and Transporter fees have been placed in the Environmental Protection Fees Regulation 61-105. Section DD will reference Regulation 61-30 for fee amounts. Small quantity generators will be required to register every 3 years with the Department, instead of every 5 years. Increased frequency of registration will allow the Department to maintain regular contact with the Department.

DETERMINATION OF COST AND BENEFITS: There will be minimal cost to the state, its political subdivisions, and to the regulated community with the implementation of this amendment.

UNCERTAINTIES OF ESTIMATES: None

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: There will be no adverse effect on the environment. The amendment will promote public health by improving the management of infectious waste within the health care community.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED: There will be no adverse effect on the environment if the amendment is not implemented. However, there will be an adverse effect on the Departments ability to carry out its strategy to enhance the management of infectious waste within the health care community in the state which in turn will limit the Departments ability to promote public health.

Document No. 2672

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61

Statutory Authority: S.C. Code Sections 44-1-140(11); 1-23-10; -110

R.61-37. Retail Food Establishment Inspection Fees

Synopsis:

R.61-37, *Retail Food Establishment Inspection Fees*, places authorization of retail food facility inspection fees in a regulation subject to the Administrative Procedures Act and public review. The purpose of this amendment is to change the late penalties and permit reinstatement fees associated with payment of retail food establishment inspection fees from \$30.00 to \$25.00, thereby eliminating confusion and accounting difficulties in crediting payment of fees.

Table of Revisions:

| <u>SECTION CITATION</u> | <u>EXPLANATION OF CHANGE</u> |
|-------------------------|------------------------------|
| 61-37.III.C. | Change \$30.00 to \$25.00. |
| 61-37.IV.A. | Change \$30.00 to \$25.00 |

Instructions: Revise R.61-37, *Retail Food Establishment Inspection Fees*, pursuant to each individual instruction provided with the text of the amendments below.

Text:

Revise Section III.C to read:

SECTION III.C. RENEWAL FEE PAYMENT AND PENALTIES

Annually, retail food establishments shall be notified that their renewal fee is due. Each retail food establishment shall determine and pay the amount of renewal fee that is appropriate for its retail sales of food. Payment shall be due thirty (30) days from the billing date. A penalty charge of \$25.00 shall be assessed for fees that are thirty (30) days past due. A second penalty charge of \$25.00 shall be assessed for fees that are sixty (60) days past due.

Revise Section IV.A to read:

SECTION IV.A. PERMIT SUSPENSION

Retail food establishments that have not paid their renewal fee and late payment penalties after ninety (90) days from their original billing date shall have their permit suspended upon service of notice of suspension. The Department may reinstate a permit suspended for failure to pay renewal fees upon payment of the fees, penalties and a \$25.00 reinstatement fee. Suspension of a permit for failure to pay the required annual fee, plus applicable late charges, shall not constitute a contested case and shall not create a right to a hearing pursuant to the South Carolina Administrative Procedures Act.

Statement of Need and Reasonableness:

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

DESCRIPTION OF REGULATION:

Purpose of Regulation: The purpose of this amendment is to change the late penalties and permit reinstatement fees associated with payment of retail food establishment inspection fees from \$30.00 to \$25.00, thereby eliminating confusion and accounting difficulties in crediting payment of fees.

Legal Authority: R.61-37, Retail Food Establishment Inspection Fees are authorized by S.C. Code Sections 44-1-140(11); 1-23-10; -110.

Plan for Implementation: The proposed amendments will make changes to and be incorporated into R.61-37 upon approval by General Assembly, and publication in the State Register. The proposed amendments will be implemented in the same manner in which the existing regulations are implemented.

88 FINAL REGULATIONS

DETERMINATION OF NEED AND REASONABLENESS OF THE REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS: R.61-37 was passed in June of 2000 with an effective date of June 25, 2000, and was implemented in September 2000. The fees in this regulation were set at an initial annual fee rate of \$60.00 per facility. The regulation contains a fee scale for annual renewal in \$30.00 increments, based on gross retail sales, up to a maximum fee of \$270.00 per facility. The regulation provides for penalties for late payment of fees and permit reinstatement fees; the late penalties and permit reinstatement fees are also in \$30.00 increments. Having the fee schedule, late penalties and permit reinstatement fees all set at \$30.00 increments has created accounting difficulties and confusion in handling and properly crediting fee payments. The proposed amendment changes the late penalties and permit reinstatement fees from \$30.00 to \$25.00; this will eliminate the confusion and accounting difficulties in crediting fee payments.

DETERMINATION OF COST AND BENEFITS: There will be minimal cost to the state and its political subdivisions. The regulated community will realize a small cost savings by having the late penalties and permit reinstatement fees reduced from \$30.00 to \$25.00.

UNCERTAINTIES OF ESTIMATES: None.

EFFECT ON THE ENVIRONMENT: There will be no effect on the environment. The amendments will improve the Department's ability to provide quality customer service to the regulated community.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED: There will be no adverse effect on the environment or public health if the amendments are not implemented. However, there will be an adverse effect on the Department's ability to process payment of fees in an accurate and timely manner, thereby limiting the Department's ability to provide quality and efficient customer service to the regulated community.

Document No. 2670

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61

Statutory Authority: S.C. Code Sections 44-1-140, 48-1-30,
and 44-87-10 *et seq.*

R. 61-86.1, Standards of Performance for Asbestos Projects

Synopsis:

The South Carolina Department of Health and Environmental Control (Department) is amending Regulation 61-86.1 - Standards of Performance for Asbestos Projects, to prescribe alternate procedures and fees for asbestos abatement projects and licenses. The purpose of this revision is to add fees for other special asbestos project categories. This amendment is necessary to help provide adequate funding for the asbestos program. The fee schedule for asbestos abatement projects and licenses has not been updated since established in 1988. South Carolina's fee schedule will be expanded in some areas, taking into account current fees assessed by other Southeastern states. The Department has processed demolition project permits and approved asbestos training courses since 1988, but is currently performing these services without assessment of fees to the regulated community. This amendment adds fees for the licensing of asbestos training courses that are required for asbestos abatement personnel and for the processing and inspection of demolition projects.

This amendment will be limited in scope to the revisions named herein.

A Notice of Drafting for the amendment to R.61-86.1 was published on July 27, 2001, and a Notice of Proposed Regulation was published on October 26, 2001 in the *South Carolina State Register*. See Summary of Revisions and Statement of Need and Reasonableness provided herein.

Discussion of Revisions

| SECTION CITATION: | EXPLANATION OF CHANGE: |
|------------------------|---|
| Section I. Definitions | Revise the introductory paragraph. Enclose all “words and phrases” in quotation marks and insert new “words and phrases” to the list of definitions in alphabetic order. Renumber the definitions as required. Add a definition for “Asbestos Training Course Provider.” Add a definition for “Asbestos Training Course.” Add a definition for “Asbestos Training Course Instructor.” |
| Section II.A. | Amend to include applicability to training course providers. |
| Section III.A. | Amend to add III.A.6. through III.A.9. regarding applicability to licensing requirements for asbestos training courses. |
| Section III.B.1. | Add a reference to application for asbestos training course licenses. |
| Section III.B.2. | Add III.B.2.i. to include a reference to asbestos training course licenses. |
| Section III.D. | Add III.D.7. to include fees for individual asbestos training course licenses and for annual renewal of licenses. |
| Section X.B.1.a. | Add reference to separate fees for licensing of demolition projects. |
| Section XIII.B.1.a. | Add reference to submittal of fees with each notification submitted for demolition operations. |
| Section XIII.B.5.a. | Correct the reference to Section V.B.4.a. - n. |
| Section XIII.G. | Add a new Section XIII.G. |

Instructions: Amend R. 61-86.1 pursuant to each individual instruction provided with the text below:

Text:

R. 61-86.1, Standards of Performance for Asbestos Projects

Replace Section I. Definitions in its entirety, to read:

The following words and phrases when used in this regulation shall have the meanings ascribed to them in this Section.

1. “Abatement” - Procedures to control fiber release from regulated asbestos-containing materials. This includes removal, enclosure, encapsulation, repair, and any associated preparation, clean up and disposal activities having the potential to disturb regulated asbestos-containing material.

90 FINAL REGULATIONS

2. "Adequately wet" - To sufficiently mix or penetrate with liquid to prevent the potential release of particulates. The absence of visible emissions is not sufficient evidence of being adequately wet.
3. "Aggressive clearance sampling" - A method of sampling which uses electric fan(s), electric leaf blower, and other devices to simulate vigorous activity in the abated area while air samples are being collected.
4. "AHERA" - Asbestos Hazard Emergency Response Act, 40 CFR Part 763, Asbestos Containing Materials in Schools.
5. "AIHA" - American Industrial Hygiene Association.
6. "Airlock" - A chamber which permits entrance and exit with minimum air movement between a contaminated area and an uncontaminated area, consisting of two doorways protected by two overlapping polyethylene sheets and separated by a sufficient distance such that one passes through one doorway into the chamber, allowing the doorway sheeting to overlap and close off the opening before proceeding through the second doorway. The airlock maintains a pressure differential between the contaminated and uncontaminated areas thereby further minimizing flow-through contamination.
7. "Air sampling" - A method such as NIOSH 7400 for PCM, the OSHA Reference Method, 40 CFR 763 Appendix A for TEM, or an equivalent method accepted by the Department used to determine the fiber content of a known volume of air during a specified period of time.
8. "Air sampler" - A person licensed by the Department to implement air-monitoring plans and analysis schemes during abatement.
9. "Amended water" - Water to which a surfactant has been added.
10. "Area air sampling" - Any form of air sampling whereby the sampling device is placed at a stationary location either inside or outside the work area.
11. "Asbestos" - The asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, and actinolite-tremolite.
12. "Asbestos abatement entity" - Any individual, partnership, firm, association, corporation, sole proprietorship or other business concern as well as an employee or member of any governmental, religious or social organization who is involved in asbestos abatement.
13. "Asbestos project" - Any activity associated with abatement including inspection, design, air monitoring, in-place management or other disturbance of regulated asbestos-containing materials (RACM). This also includes demolition of a regulated facility.
14. "Asbestos project design" - A written or graphic plan prepared by an accredited project designer specifying how an asbestos abatement project will be performed, and which includes, but is not limited to, scope of work and technical specifications.
15. "Asbestos containing material (ACM)" - Material containing asbestos of any type, either alone or mixed with other materials, in an amount greater than 1 percent as determined by using the method specified in 40 CFR Part 763 Appendix A, Subpart F, Section 1, as amended, or an accepted equivalent.
16. "Asbestos containing waste materials" - As applied to demolition and renovation operations, this term includes regulated asbestos-containing waste materials and materials contaminated with asbestos, including disposable equipment and clothing.

17. "Asbestos training course provider" - The person, sole proprietorship, public corporation, or incorporated entity that meets the qualifications to provide instruction in any of the specific work practice topics or disciplines.
18. "Asbestos training course" - A Department approved initial or refresher course that meets the specific requirements for qualification of an applicant seeking a license in any of the specific work practice topics or disciplines.
19. "Asbestos training course instructor" - A Department approved individual who meets the qualifications, as prescribed in Section XV of this regulation, for teaching non-work practice topics and/or for teaching work practice or hands-on topics in any specific initial or refresher training course for the following work practice disciplines:
- a. Workers
 - b. Supervisors
 - c. Management Planners
 - d. Building Inspectors
 - e. Project Designers
 - f. Operations and Maintenance Workers
20. "ASHARA" - Asbestos School Hazard Abatement Reauthorization Act.
21. "Authorized visitor" - The facility owner/operator, or any representative of a regulatory or other agency having jurisdiction over the project. This is limited to government project inspectors, police, paramedics, fire-safety personnel, nuclear plant operators, and insurance loss prevention safety auditors, or other personnel as approved on a case-by-case basis by the Department.
22. "Background monitoring" - Area sampling performed prior to abatement to obtain an index of existing airborne fiber levels under typical activity.
23. "Building inspection" - An activity undertaken at a facility to determine the presence and location of regulated and non-regulated asbestos-containing materials (ACM), and to assess the condition of materials identified as ACM. This includes visual or physical examination and bulk sample collection.
24. "Building inspector" - A person licensed by the Department to examine a facility for the presence of ACM, to identify and assess the condition of the material, and to collect bulk samples.
25. "Category I nonfriable asbestos containing material (ACM)" - Nonfriable asbestos or nonfriable asbestos containing packing, gaskets, resilient floor covering, and asphalt roofing products containing more than 1 percent asbestos as determined using the method specified in 40 CFR Part 763, Appendix A, Subpart F, Section 1, or an accepted equivalent.
26. "Category II nonfriable ACM" - Any material that cannot, when dry, be crumbled, pulverized, or reduced to powder by the forces expected to act upon it in the course of demolition or renovation operations, excluding Category I nonfriable ACM, containing more than 1 percent asbestos as determined using the methods specified in 40 CFR Part 763, Appendix A, Subpart F, Section 1, or an accepted equivalent.
27. "Clean room" - An uncontaminated area or room, which is a part of the decontamination enclosure system with provisions for storage of street clothing and protective equipment.
28. "Clearance monitoring" - Area air sampling performed using Department accepted aggressive clearance sampling techniques to determine the airborne concentrations of residual fibers upon conclusion of asbestos abatement.

92 FINAL REGULATIONS

29. "Commercial labor provider" - Any individual, partnership, corporation or other business concern not engaged in an asbestos project but which provides temporary workers or supervisors to the owner/operator of the project.
30. "Consultant" - A person licensed by the Department to perform duties related to an asbestos project such as a building inspector, management planner, or project designer.
31. "Contractor" - Any individual, partnership, corporation or other business concern that performs asbestos abatement but who is not a permanent employee of the facility owner.
32. "Control measure" - Use of amended water, negative pressure differential equipment, encapsulant, high efficiency particulate air filtration device, glove bag or other state-of-the-art equipment designed to prevent fiber release into the air.
33. "Critical barrier" - A leak-tight seal applied from within the work area to isolate vents, windows, doors, and any other cavity or opening to the contaminated work area.
34. "Cut" - To penetrate with a sharp-edged instrument. This includes sawing, but may not include shearing, slicing, or punching.
35. "Decontamination enclosure system" - An enclosed area adjacent and connected to the regulated work area consisting of an equipment room, shower area, and clean room, each separated by airlocks, which is used for the decontamination of employees, materials and equipment that are contaminated with asbestos.
36. "Demolition" - Wrecking or taking out any load-supporting structural member of a facility together with any related handling operations, or the burning of any regulated facility.
37. "Department" - The South Carolina Department of Health and Environmental Control.
38. "Electrical generating facility" - Any establishment primarily engaged in the generation, transmission and/or distribution of electrical energy for sale.
39. "Emergency operation" - A renovation or demolition operation that was not planned but results from a sudden, unexpected event that if not immediately attended to will present an imminent safety or public health hazard, will cause equipment damage, or will impose an unreasonable financial burden. This term specifically excludes routine equipment maintenance.
40. "Encapsulation" - A form of abatement involving the treatment of regulated asbestos-containing material (RACM) with a liquid, which covers the surface with a protective coating (bridging) or embeds fibers in an adhesive matrix (penetrating) to prevent the release of asbestos fibers.
41. "Enclosure" - A form of abatement involving placement of a leak-tight, impermeable, permanent barrier to prevent access to regulated asbestos-containing material and to prevent the release of asbestos fibers.
42. "EPA" - United States Environmental Protection Agency.
43. "Equipment room" - A contaminated area or room, which is part of the decontamination enclosure system with provisions for the storage of contaminated clothing and equipment.
44. "F/cc" - Fibers per cubic centimeter.
45. "Facility" - Any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any bridge;

any ship; and any active or inactive waste disposal site. For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation or building that was previously subject to this requirement is included in this definition, regardless of its current use or function.

46. "Facility component" - Any part of a facility including equipment.

47. "Friable" - Refers to ACM, which may, when dry, be crumbled, pulverized, or reduced to powder by the forces expected to act upon it in the course of demolition or renovation operations. This also refers to previously non-friable ACM after such material becomes damaged to the extent that when dry, may be crumbled, pulverized, or reduced to powder.

48. "Friable asbestos containing material" - Any material that when dry can be or has been crumbled, pulverized, or reduced to powder, and which contains more than 1 percent asbestos as determined using the method specified in 40 CFR Part 763, Appendix A, Subpart F, Section 1, as amended, or an accepted equivalent.

49. "Glove bag" - A sealed compartment with attached inner gloves used for the handling of asbestos-containing materials. Information on glove-bag installation, equipment and supplies, and work practices is contained in the Occupational Safety and Health Administration's (OSHA's) final rules on occupational exposure to asbestos, 29 CFR 1926.1101, (August 10, 1994) as amended, and any subsequent amendments or editions.

50. "Grind" - To reduce to powder or small fragments. Grinding includes mechanical chipping or drilling.

51. "HEPA filter" - A high efficiency particulate air filter which will capture particles with an aerodynamic diameter of 0.3 micrometers with a minimum efficiency of 99.97 percent.

52. "HVAC" - Heating, ventilation and air conditioning.

53. "Industrial manufacturing facility" - Any establishment whose Standard Industrial Classification code falls within Major Groups 20 through 39 excluding any office space which is part of such establishment.

54. "In poor condition" - Refers to any ACM where the binding of the material is losing its integrity as indicated by peeling, cracking, or crumbling of the material.

55. "Installation" - Any building or structure or any group of buildings or structures at a single demolition or renovation site that are under the control of a single owner or operator (or of owners or operators under common control).

56. "Issue date" - The date printed on the Departmental Asbestos Abatement License, which indicates the date of successful completion of an examination administered upon completion of an asbestos training course.

57. "Leak-tight" - Dust, solids or liquids cannot escape or spill out.

58. "License" - A document issued by the Department which allows an asbestos abatement contractor, building inspector, project designer, management planner, air sampler, supervisor, worker or other consultant to engage in asbestos projects.

59. "Long-term, in-house contractor" - A contractor having a long-term, often multi-year, contractual arrangement with an industrial manufacturing or electrical generating facility to provide construction and maintenance services, including asbestos abatement. The employees of a designated long-term, in-house contractor shall be covered under the group license of the assigned facility.

94 FINAL REGULATIONS

60. "Management planner" - A person licensed in accordance with the requirements of this regulation who interprets inspection reports, conducts hazard assessments of asbestos-containing materials, determines appropriate response actions, develops a schedule for implementing response actions, and prepares written management plans.
61. "Minor project" - A project where 25 or less square or linear feet of regulated asbestos-containing material (RACM) is removed, or where 10 or less cubic feet of RACM off a facility component is cleaned up.
62. "Movable object" - A structure within the work area that can be easily removed, (e.g. chair, desk, etc.).
63. "Negative pressure differential equipment" - A portable exhaust system equipped with a HEPA filter.
64. "NESHAP" - National Emission Standards for Hazardous Air Pollutants, 40 CFR 61 Subpart M, February 3, 1994, as amended, and any subsequent amendments or editions.
65. "NESHAP project" - An asbestos project which involves at least 160 square feet or 260 linear feet of RACM, or 35 or more cubic feet of RACM off a facility component such that the area or length could not be measured prior to abatement. If several contemporaneous projects in the same area within the same building performed by the same contractor are smaller than 160 square or 260 linear feet individually but add up to that amount, then the combination of the smaller projects shall be considered one NESHAP project.
66. "NIOSH" - National Institute for Occupational Safety and Health.
67. "Operation and maintenance activity" - The disturbance of regulated asbestos-containing material only when required in the performance of an emergency or routine maintenance activity, which is not intended solely as asbestos abatement. In no event shall the amount of RACM disturbed exceed that which can be contained in one glove bag or 6-mil polyethylene bag which shall not exceed 60 inches in length and width.
68. "OSHA" - Occupational Safety and Health Administration.
69. "Owner/Operator" - Any person or contractor who owns, leases, operates, controls, or supervises a facility being demolished or renovated, or any person who operates, controls, or supervises the demolition or renovation operation, or both.
70. "Owner's representative" - A licensed consultant or air sampler designated by the facility owner to manage the asbestos project, and who serves to ensure that abatement work is completed according to specification and in compliance with all relevant statutes and regulations.
71. "Personal air sampling" - A method used to obtain an index of an employee's exposure to airborne fibers. Samples are collected outside the respirator in the worker's breathing zone.
72. "Planned renovation operations" - A renovation operation, or a number of such operations, in which some RACM will be disturbed, removed or stripped within a given period of time, and that can be predicted. Individual nonscheduled operations are included if a number of such operations can be predicted to occur during a given period of time based on operating experience.
73. "Process date" - The date a license is printed by the Department.
74. "Project designer" - A person licensed in accordance with the requirements of this regulation who is directly responsible for planning all phases of an asbestos abatement project design from project site preparation through complete disassembly of all abatement area barriers.

75. "Reciprocity" - A written agreement between another state and South Carolina to use the same or equivalent auditing criteria when evaluating training course materials, course presentations, and instructor qualifications.
76. "Regulated asbestos-containing material (RACM)" - (a) Friable asbestos-containing material; (b) Category I nonfriable ACM that has become friable; (c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading; or (d) Category II nonfriable ACM that is likely to become or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations subject to this regulation.
77. "Removal" - Taking out RACM or facility components that contain or are covered with RACM from any facility.
78. "Renovation" - Altering a facility, or one or more facility components in any way, including the stripping or removal of RACM from a facility component. Operations in which load-supporting structural members are wrecked or taken out are demolitions.
79. "Repair" - Procedure used to patch, cover or otherwise restore damaged asbestos-containing material other than enclosure or encapsulation.
80. "Resilient floor covering" - Asbestos-containing floor tile, including asphalt and vinyl floor tile, and sheet vinyl floor covering containing more than 1 percent asbestos as determined using polarized light microscopy according to the method specified in Appendix A, Subpart F, 40 CFR Part 763, Section 1, Polarized Light Microscopy, or an accepted equivalent.
81. "Roofing materials" - For the purposes of this regulation, roofing materials shall include but are not limited to: Bituminous built-up roofing systems, roofing membranes, asphalt shingles, cement shingles, roofing cements, mastics, coatings, panels, light weight roofing concrete, and flashing.
82. "Shower room" - A room located between the clean room and the equipment room in the decontamination enclosure system containing a shower with hot and cold or warm running water controllable at the tap.
83. "Small project" - A project where more than 25 but less than 160 square feet or more than 25 but less than 260 linear feet of RACM is abated, or where more than 10 but less than 35 cubic feet of RACM off a facility component is cleaned up.
84. "Start date" - The date printed on the Departmental issued asbestos abatement project license, which indicates when asbestos renovation or demolition operations, including any abatement activity having the potential to disturb RACM, will begin.
85. "Strip" - To remove RACM from any part of a facility or facility component.
86. "Structural member" - Any load-supporting member of a facility, such as beams and load-supporting walls; or any non-load-supporting member, such as ceilings and non-load-supporting walls.
87. "Structures per square millimeter" - Reporting measure for Transmission Electron Microscopy (TEM) Analysis. TEM clearance requires less than 70 structures per square millimeter (70s/mm²).
88. "Surfactant" - A chemical wetting agent added to water to improve penetration, such as a non-sudsing detergent.
89. "Supervisor" - A person licensed by the Department and designated as the contractor's representative to provide direct on-site supervision and guidance to workers engaged in abatement of RACM.

96 FINAL REGULATIONS

90. "Temporary Storage License" - A license issued by the Department which authorizes storage of asbestos waste from small and minor projects at a secure location acceptable to the Department.
91. "Visible emissions" - Any emissions which are visually detectable without the aid of instruments, coming from RACM or asbestos-containing waste material or a regulated work area.
92. "Waste generator" - Any owner/operator of an asbestos project covered by this regulation whose act or process produces asbestos-containing waste material.
93. "Waste shipment record" - The shipping document, required to be originated, prepared, and signed by the waste generator, used to track and substantiate the disposition of asbestos-containing waste material.
94. "Wet cleaning" - The process of eliminating asbestos contamination from facility surfaces and objects by using cloths, mops or other cleaning tools which have been dampened with water.
95. "Work area" - Designated rooms, spaces or areas in which asbestos abatement activities are to be undertaken, or which may be contaminated as a result of such abatement activities.
96. "Worker" - A person licensed by the Department to perform asbestos abatement under the direct guidance of an accredited and licensed supervisor. However, facility operation and maintenance workers are not required to work under a licensed supervisor.
97. "Working day" - Monday through Friday, including holidays that fall on any of the days Monday through Friday.

Revise Section II.A. to read:

A. The requirements of this regulation shall apply to any owner/operator, building inspector, management planner, project designer, contractor, asbestos abatement entity, consultant, air sampler, commercial labor provider, supervisor, or worker involved in the inspection, in-place management, design, removal, encapsulation, enclosure, renovation, repair, demolition, or any other disturbance of RACM; and to any asbestos training course provider or asbestos training course instructor who conducts mandatory asbestos training courses.

Revise Section III.A. to add III.A.6. through III.A.9. to read:

6. Asbestos training course providers must have a separate license for each initial or refresher training course taught in any specific work practice topic or discipline. Each course license is valid for an entire year, regardless of the number of times the course is taught during the year.

7. Licenses for asbestos training course providers will be restricted to courses approved by the Department in accordance with the requirements of Section XV of this regulation.

8. Each asbestos training course approved and licensed pursuant to this regulation for the first time will be audited and assessed the initial audit fee prescribed in Section III.D.7 of this regulation. Each training course for which renewal of a license is sought will be assessed the annual license renewal fee prescribed in Section III.D.7.

9. An asbestos training course must have a current and valid license on the date that it was taught to be acceptable as a basis for documentation that the person receiving the course certificate has completed the requisite training for asbestos accreditation in any specific work practice topic or discipline.

Revise Section III.B.1. to read:

1. Each applicant seeking a license in any discipline except that of Contractor, shall successfully complete a Department-approved initial training course specific to the discipline and, at the conclusion of the course, shall pass an examination with a score of 70 percent or above. Applicants seeking a license for an asbestos training course in any discipline must submit documentation of qualifications and any other information necessary to meet the criteria for Department approval in accordance with the requirements of Section XV of this regulation.

Add new Section III.B.2.i. to read:

i. Asbestos Training Course Licenses:

(1) An asbestos training course provider who intends to present training courses within the State shall submit an application for approval, for each initial or refresher training course taught in any specific work practice topic or discipline, that contains all information necessary to verify qualifications as required in Section XV of this regulation.

(2) Each initial or refresher training course taught in any specific work practice topic or discipline shall be licensed individually upon Department approval in accordance with the requirements of Section XV of this regulation.

(3) When an asbestos training course instructor conducts mandatory asbestos training courses in more than one discipline, documentation of course instructor qualifications for each discipline must be submitted as required in Section XV of this regulation.

Add new Section III.D.7. to read:

7. Asbestos Training Course License Fees.

a. Fee Schedule

(1) Initial audit for each training course license - \$350.00 per day per course.

(2) Annual license renewal for Department approved training courses - \$200.00 per course.

b. Each course license is valid for an entire year, regardless of the number of times the course is taught during the year.

c. Fees shall not be refunded if a training course is denied a license per Section III.F. of this regulation.

d. Failure to pay annual training course license renewal fees may, after a hearing in accordance with the provisions of Section XVIII of this regulation, result in the course license being revoked.

Revise Section X.B.1.a. and X.B.1.a.(1) to read:

a. Each owner/operator of a renovation or demolition operation to which this Section applies shall:

(1) Provide the Department with written notification at least 10 working days prior to any renovation or demolition and pay all applicable project fees. Acceptable delivery of the notification and fee payment is by U.S. Postal Service or commercial delivery service, by hand, or by other methods acceptable to the Department.

Revise Section XIII.B.1.a. to read:

98 FINAL REGULATIONS

a. Provide the Department with written notice of intent to demolish at least 10 working days in advance of the demolition, and pay all applicable fees. Acceptable delivery of the notice shall be by U.S. Postal Service, commercial delivery service, by hand or by other methods acceptable to the Department.

Revise Section XIII.B.5.a. to read:

a. The notice shall include all of the information required by Section V.B.4.a. - n. of this regulation.

Add new Section XIII.G. to read:

G. Project Fees.

1. The Department shall charge a fee of \$50.00 to issue a project license for demolition projects.
2. A project license is required for every facility to be demolished including any facility in which the required building survey indicates there are no asbestos-containing materials present.
3. The Department shall not issue a project license for a demolition until all requested information has been submitted and reviewed, and all applicable fees have been paid.
4. Fees shall not be refunded for projects for which the Department has issued a project license.
5. A project license that has been issued shall automatically become invalid if an instrument of payment is returned for insufficient funds, and the licensee shall be subject to enforcement action for operation without a valid license.

Fiscal Impact Statement:

The Department estimates no additional cost will be incurred by the state or its political subdivisions as a result of the promulgation, approval, and implementation of this amendment; therefore, no additional state funding is being requested. Existing staff and resources will be utilized in additional regulatory administration resulting from these amendments to the regulations.

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: *R.61-86.1, Standards of Performance for Asbestos Projects*, prescribes fees applicable to each asbestos abatement project, and to each asbestos abatement entity that performs asbestos removal or encapsulation. This regulation also establishes procedures for the payment of fees, provides for the denial of licensing for nonpayment, and establishes an appeals process to contest the denial, suspension, revocation, or issuance of any license.

Purpose of Regulation: The Department's amendment to R.61-86.1 incorporates fees and licenses for other special asbestos project categories. Fees are added for the licensing of asbestos training courses that are required for licensing of asbestos abatement personnel and for the processing and inspection of demolition projects.

Legal Authority: The legal authority for R.61-86.1 is S.C. Code of Laws, Sections 44-1-140, 48-1-30, and 44-87-10 *et seq.*

Plan for Implementation: These amendments will be incorporated within R.61-86.1 upon approval of the S.C. General Assembly and publication in the *South Carolina State Register*. The amendments will be implemented in the same manner in which the existing regulation is implemented.

DETERMINATION OF NEED AND REASONABLENESS OF THE REGULATIONS BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

The Department's amendment to *Regulation 61-86.1, Standards of Performance for Asbestos Projects*, adds fees for other special asbestos project categories. This amendment is necessary to help provide adequate funding for the asbestos program. The fee schedule for asbestos abatement projects and licenses has not been updated since established in 1988. South Carolina's fee schedule will be expanded in some areas. These fees are reasonable, taking into account current fees assessed by other Southeastern states. Fees are added for the licensing of asbestos training courses that are required for licensing of asbestos abatement personnel and for the processing and inspection of demolition projects. See below for determination of costs and benefits, effect on the public health and environment, and detrimental effect if the proposed regulations are not implemented.

DETERMINATION OF COSTS AND BENEFITS:

The asbestos program was started in 1986 with the aid of a one-time grant of \$200,000 from the United States Environmental Protection Agency. Legislation establishing fees for licenses and for projects (SC Code 44-87-10 *et seq.*, "Asbestos Abatement License") became effective on July 1, 1988. These fees have enabled the asbestos program to operate with adequate funding since 1988. Due to decreased revenues from fees for asbestos licenses and projects in recent years, along with inflation and increased personnel and operating costs, the program is requesting the addition of fees for other special asbestos project categories.

There are no State appropriations directed to these services, therefore, there will be no increased cost to the State or its political subdivisions resulting from the promulgation and implementation of these amendments to R.61-86.1. There will be an increased cost to the regulated community as a result of fees being charged for services that the Department is currently providing without an assessment of fees.

UNCERTAINTIES OF ESTIMATES:

There are no uncertainties associated with the proposed amendments to R.61-86.1.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

The Department has processed demolition project permits and approved asbestos training courses since 1988, but is currently performing these services without assessment of fees to the regulated community. These amendments to R.61-86.1 will impose fees in line with similar fees being charged by other states. This increase in revenue would help defray the cost of providing these services and help ensure adequate oversight of the asbestos program.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATIONS ARE NOT IMPLEMENTED:

Licensing of demolition projects helps ensure that asbestos containing materials identified prior to demolition are handled and disposed of properly and that the projects are conducted in accordance with the requirements of the asbestos regulations. Training Providers are audited to ensure that the course material and curriculum meet specific criteria and that individual instructors are currently qualified to administer mandatory training to asbestos abatement personnel in each work practice topic or discipline. The Department's proficiency in overseeing asbestos projects throughout the State could be compromised if the current fee schedule is not updated. Inadequate funding for administration of the asbestos program could result in a cutback of project inspections and investigations, which could lead to an increase in non-compliance.

PART TWO

FINAL REGULATIONS

HEALTH AND ENVIRONMENTAL CONTROL, DEPARTMENT OF

| | | |
|-------------------|--|-----|
| Document No. 2646 | Standards for the Permitting of Agricultural Animal Facilities | 1 |
| Document No. 2698 | Standards for Stormwater Management and Sediment Reduction..... | 111 |
| Document No. 2719 | Vital Statistics | 113 |
| Document No. 2721 | Waste Combustion and Reduction | 131 |

INSURANCE, DEPARTMENT OF

| | | |
|-------------------|--|-----|
| Document No. 2705 | Deposits Required of Insurers | 139 |
| Document No. 2706 | Health Maintenance Organizations | 140 |
| Document No. 2704 | Salvage and Subrogation..... | 149 |

LABOR, LICENSING AND REGULATIONS, DEPARTMENT OF

| | | |
|-------------------|--|-----|
| Document No. 2686 | Recording and Reporting Occupational Injuries and Illnesses..... | 149 |
|-------------------|--|-----|

LOTTERY COMMISSION

| | | |
|-------------------|---------------------------------------|-----|
| Document No. 2694 | South Carolina Education Lottery..... | 172 |
|-------------------|---------------------------------------|-----|

NATURAL RESOURCES, DEPARTMENT OF

| | | |
|-------------------|--------------------------------------|-----|
| Document No. 2710 | Non-game and Endangered Species..... | 187 |
|-------------------|--------------------------------------|-----|

REVENUE, DEPARTMENT OF

| | | |
|-------------------|--|-----|
| Document No. 2650 | ABC Name and Cite Change | 191 |
| Document No. 2662 | Administrative, License, Income and Property Tax..... | 203 |
| Document No. 2695 | Alcoholic Beverage Regulations (Repeal) | 217 |
| Document No. 2651 | Alcoholic Liquor Advertising | 218 |
| Document No. 2636 | Sales, Property, Administrative, Estate, Video Game, Income Tax (Repeal) . | 219 |
| Document No. 2658 | Sales Tax | 221 |

Resubmitted April 11, 2002

Document No. 2646
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
 CHAPTER 61

Statutory Authority: 1976 Code Sections 48-1-30 and 47-20-165

R. 61-43, Standards for the Permitting of Agricultural Animal Facilities.

Synopsis:

To satisfy the requirements of the 1996 Act No. 460, the Department is proposing to amend R.61-43. The amendment will: (1) establish a new Part 50 where all definitions are now found; (2) rewrite Part 100 (Swine Facilities) in its entirety which will be the separate and distinct regulation for swine facilities as required by 1996 Act No. 460, which included the Confined Swine Feeding Operations Act; (3) add new requirements to Part 100 which address a new class of large swine facilities; (4) modify Part 200 (Other Animal Facilities) and Part 300 (Innovative and Alternative Technology); (5) add a new section that specifically outlines requirements for manure broker operations, as well as a section that addresses integrator registration, and a section for severability; and (6) incorporate recommendations made by a Regulation Development Committee which was organized to review the regulation for issues and concerns.

Discussion of Revisions:
 TABLE II

Table II reflects changes made to Document 2646, proposed amendment of R.61-43, as requested by the S.C. House of Representatives Agriculture, Natural Resources & Environmental Affairs Committee on April 11, 2002. See also Table I below, which reflects the changes, approved by the Board of Health and Environmental Control.

| <u>SECTION</u> | <u>CHANGE</u> |
|---------------------|---|
| R.61-43.100.80.A.15 | Delete this item, which exempts small swine facilities from property line setbacks when the adjoining property is either owned and managed by a professional silvicultural corporation, in current agricultural crop production, or zoned agricultural. By deleting this item the setbacks from the property lines with waiver capability are reinstated for the three adjoining property uses. |
| R.61-43.100.80.B.13 | The third sentence contains a reference to 100.80.C.4-6. This reference was corrected, as it should be 100.80.B.9-11. |
| R.61-43.100.80.B.14 | Delete this item, which establishes a property line setback of 200 feet for large swine facilities with less than 1,000,000 pounds when the adjoining property is owned and managed by a professional silvicultural operation, in current agricultural crop production, or zoned agricultural. By deleting this item the larger setbacks from the property lines with waiver capability are reinstated for the three adjoining property uses. |
| R.61-43.100.80.A.3. | Delete the statement "located down slope from the facility" from the first sentence. This results in the same setbacks without regard to topography. |
| R.61-43.100.80.A.4. | Delete the statement "located down slope from the facility" from the first sentence. This results in the same setbacks without regard to topography. |

2 FINAL REGULATIONS

- R.61-43.100.80.A.5. Delete the statement “located down slope from the facility, lagoon, treatment facility or manure storage pond” from the first sentence. This results in the same setbacks without regard to topography.
- R.61-43.100.80.A.6. Delete the statement “located down slope from the facility” from the first sentence. This results in the same setbacks without regard to topography.
- R.61-43.100.80.A.7. Delete the statement “located down slope from the facility, lagoon, treatment facility or manure storage pond” from the first sentence. This results in the same setbacks without regard to topography.
- R.61-43.100.80.B.3. Delete the statement “located down slope from the facility” from the first sentence. This results in the same setbacks without regard to topography.
- R.61-43.100.80.B.4. Delete the statement “located down slope from the facility” from the first sentence. This results in the same setbacks without regard to topography.
- R.61-43.100.80.B.5. Delete the statement “located down slope from the facility, lagoon, treatment facility or manure storage pond” from the first sentence. Delete the second sentence in its entirety. This results in the same setbacks without regard to topography.
- R.61-43.100.80.B.7. Delete the statement “located down slope from the facility, lagoon, treatment facility or manure storage pond” from the first sentence. Delete the second sentence in its entirety. This results in the same setbacks without regard to topography.
- R.61-43.100.80.C.1. Delete the statement “located down slope from the facility” from the first sentence. This results in the same setbacks without regard to topography.
- R.61-43.100.80.C.2. Delete the statement “located down slope from the facility, lagoon, treatment facility or manure storage pond” from the first sentence. This results in the same setbacks without regard to topography.
- R.61-43.100.100.C.1.b. Delete the statement “located down slope from the area” from the first sentence. This results in the same setbacks without regard to topography.
- R.61-43.100.100.C.1.c. Delete the statement “located down slope from the area” from the first sentence. This results in the same setbacks without regard to topography.
- R.61-43.100.100.C.1.d. Delete the statement “located down slope from the area” from the first sentence. This results in the same setbacks without regard to topography.
- R.61-43.100.100.C.2.b. Delete the statement “located down slope from the area” from the first sentence. Delete the second sentence in its entirety. This results in the same setbacks without regard to topography.
- R.61-43.100.100.C.2.c. Delete the statement “located down slope from the area” from the first sentence. Delete the second sentence in its entirety. This results in the same setbacks without regard to topography.
- R.61-43.100.100.C.3.c. Delete the statement “located down slope from the area” from the first sentence. This results in the same setbacks without regard to topography.

R.61-43.100.100.C.3.e. Delete the statement “located down slope from the area” from the first sentence. This results in the same setbacks without regard to topography.

TABLE I

Table I reflects changes made to Document 2646, proposed amendment of R.61-43, as promulgated by the Board of Health and Environmental Control and submitted to the General Assembly on February 6, 2002:

Issue (1) Establish a new Part 50 where all definitions are now found;

| <u>SECTION</u> | <u>CHANGE</u> |
|----------------|--|
| R.61-43.50 | Moved all definitions in R.61-43 to new section R.61-43.50. Twenty-six (26) new definitions are added in alphabetical/numerical order. Definitions added are for Animal Facility Management Plan, Animal by-product, Average animal live weight, Broker, Commercial Facility, Compost, Composting, Deemed Permitted Facility, Excessive Mortality, Integrator or Integrating company, Large Animal Facility, Liquid manure, Manure, Manure storage pond, Manure utilization area, NRCS-CPS, Nuisance, Potable water well, Residence, Seasonal High Water Table, Small Animal Facility, Source Water Protection Area, Swine by-product, and Wastewater. |
| R.61-43.50 | Added additional wording to the definition of “Expansion” for clarity. |
| R.61-43.50 | Defined two new size classifications for animal facilities other than swine. 500,000 pounds or less of normal production live weight is a small animal facility and more than 500,000 pounds is a large animal facility. |
| R.61-43.50 | Altered the definitions for “Small Swine Facility” and “Large Swine Facility” to change the weight classifications for these two categories. The new normal production live weight (at any one time) categories classify facilities with 500,000 pounds or less as small, and facilities with greater than 500,000 pounds as large. |
| R.61-43.50 | Altered the definition for “Swine Facility” to include the following language which addresses large swine facility density in an area: “For any new or expanding swine facility, the combined normal production of all swine facilities owner by the producer, and of all swine facilities owned by corporations having a common majority shareholder in common with the producer, within twenty five miles of the new or expanding facility shall be used to determine the normal production of the new or expanding facility. For example, when a new facility has a proposed capacity of 300,000 pounds of normal production and the producer owns two other swine facilities within twenty five miles of the new or expanding swine facility and the normal production of each facility is 400,000 pounds, the proposed swine facility’s normal production is 1,100,000 (300,000 + 400,000 + 400,000) pounds.” |

Issue (2): Rewrite Part 100 (Swine Facilities) in its entirety which will be the separate and distinct regulations for swine facilities as required by the 1996 Act No. 460;

| <u>SECTION</u> | <u>CHANGE</u> |
|----------------|--|
| R.61-43.100.80 | Restructured this section to separate and set out all the siting requirements for small and large swine facilities. Added new small swine facility setbacks from waters of the state, and ephemeral and intermittent streams. Added a new setback for small swine facilities |

4 FINAL REGULATIONS

must be 1000 feet from a residence. Added a new requirement that does not require the property line setbacks to be met for small swine facilities when the adjacent land: is owned and managed by a professional silviculture operation; is in active agricultural crop production; or is zoned for agricultural land use. The property line setbacks to be met for large swine facilities with less than 1,000,000 pounds normal production live weight are reduced to 200 feet when the adjacent land: is owned and managed by a professional silviculture operation; is in active agricultural crop production; or is zoned for agricultural land use.

R.61-43.100.80 Added new language that will not allow any reductions or waivers of property line setbacks when a swine facility is located on the adjacent property or within 1000 feet of the property line.

R.61-43.100.90 Changed the requirement that restricted lagoon surface area to four acres to a restriction on volume rather than surface area restriction, and added some new language to deal with appropriate lagoon design and installation.

R.61-43.100.90 Changed the wording of this requirement to remove the phrase "fail-safe" and replaced it with more detailed language that better describes the design which prevents lagoon or pond effluent from reaching waters of the state.

Issue (3): Add new requirements to Part 100, which address a new class of large swine facilities;

SECTION

CHANGE

R.61-43.100.20 Added a new requirement for swine facilities that are classified as a Large Swine Facility with 1,000,000 pounds or more normal production live weight which states that these facilities must also apply for an individual National Pollutant Discharge Elimination System (NPDES) permit for Confined Animal Feeding Operations (CAFO) in accordance with the provisions of Regulation 61-9.

R.61-43.100.60 Added public notice requirements for large swine facilities with 1,000,000 pounds or more normal production live weight that include: meeting all the existing requirements for large swine: the applicant must notify all property owners within one mile (instead of one quarter mile required for small swine facilities and large swine facilities with less than 1,000,000 pounds); the applicant shall conduct a minimum of one public meeting to present to the public the proposed project, its purpose, design, and environmental impacts; the applicant shall provide at least thirty days (30) notice of the meeting date and time by advertisement in a local newspaper of general circulation in the area of the proposed facility; the minutes of the public meeting, proof of advertisement, and opinions derived from the meeting must be submitted to the Department; and the Department shall conduct a public hearing and shall provide notice of the public hearing.

R.61-43.100.80 Added all new setbacks for the large swine facilities with 1,000,000 pounds or more normal production live weight as follows: the setback required between a large swine facility, lagoon, treatment system, or manure storage pond and waters of the State (excluding ephemeral and intermittent streams) located down slope from the facility is 2,640 feet (1/2 mile); if the waters of the State (not including ephemeral and intermittent streams) are designated Outstanding Resource Waters, Critical Habitat Waters of federally endangered species, or Shellfish Harvesting Waters, the setback required between a lagoon, treatment system, or manure storage pond and waters of the State is 3,960 feet (3/4 mile); the setback required between a large swine facility (including the lagoon, treatment system, and manure storage pond) and real property owned by another

person or a residence (excluding the applicant's residence) is 1,750 feet; and the setback required between a swine facility (including a lagoon, treatment system, or manure storage pond) and a potable water well (excluding the applicant's well) is 1,750 feet.

- R.61-43.100.80 Added new setback distances to address swine facility densities. For large swine facilities with less than 1,000,000 pounds, the facility must be located at least two miles from another large swine facility. For large swine facilities with 1,000,000 pounds or more normal production live weight, the facility must be located at least twenty-five miles from another large swine facility.
- R.61-43.100.90 Added requirements for large swine facilities with 1,000,000 pounds or more normal production live weight: manure treatment/storage structures must be designed for the 50 year - 24 hour storm event and provide at least two (2) feet of freeboard; lagoons and manure storage ponds shall be lined with a geomembrane liner such that the vertical hydraulic conductivity does not exceed 5×10^{-7} cm/sec; large swine lagoons or manure storage ponds must be designed with airtight covers; facilities shall utilize new technologies for the manure treatment and storage; air pollution control devices utilizing the best available technology must be installed on all lagoon cover vents and openings to remove ammonia, hydrogen sulfide, methane, formaldehyde, and any other organic and inorganic air pollutants; air pollution control devices must meet all the requirements of the Department and the Bureau of Air Quality, and an appropriate air quality control permit must be obtained; quarterly monitoring of groundwater monitoring wells; and automated lagoon level monitoring devices are required. All large swine facilities (greater than 500,000 pounds) are prohibited from utilizing *open* anaerobic lagoons or manure storage ponds.
- R.61-43.100.100 Added new siting criteria for manure utilization areas associated with large swine facilities with 1,000,000 pounds or more normal production live weight: setback from real property owned by another person is 200 feet from the property lines; setback from an occupied residence is 750 feet (excluding the applicant's residence); setback from waters of the State (not including ephemeral and intermittent streams), ditches, and swales is 150 feet; setback from a public and private drinking water well is 200 feet; setback from ephemeral and intermittent streams is 100 feet.
- R.61-43.100.100 For large swine facilities with 1,000,000 pounds or more normal production live weight, at least one up gradient and two down-gradient groundwater monitoring wells shall be installed for each drainage basin intersected by the manure utilization areas.
- R.61-43.100.110 New large swine facilities with 1,000,000 pounds or more normal production live weight are prohibited from utilizing spray application systems for manure application. Manure must be incorporated into the manure utilization fields utilizing subsurface injection at a depth of not less than six inches.
- R.61-43.100.190 Added requirement for large swine facilities with 1,000,000 pounds or more normal production live weight to have an operator-in-charge that holds a valid certificate of registration issued by the Board of Certification of Environmental Systems Operators in a grade corresponding to the classification of the agricultural wastewater treatment plant supervised by him or her.
- R.61-42.100.210 Added that large swine facilities with 1,000,000 pounds or more normal production live weight shall be assessed automatic penalties (up to \$10,000 per day per violation) for the following violations: lagoon, treatment system or manure storage pond breach or loss of containment that is not the direct result of an Act of God; manure utilization area runoff

6 FINAL REGULATIONS

due to improper manure application methods; and discharge to groundwater on site causing groundwater to exceed any water quality standard established in R61-68; (Immediate cessation of manure application will also be enforced on the site). Second occurrence of any of the violations listed above shall result in immediate revocation of the permit and the automatic assessment of appropriate penalties.

***Issue (4):
Technology);***

Modify Parts 200 (Other Animal Facilities) and Part 300 (Innovative & Alternative

SECTION

CHANGE

- R.61-43.200.50 Altered the requirement for actual manure analysis to be submitted to the Department within 6 months after the start of operation, to allow up to 12 months.
- R.61-43.200.70 Added some additional language to address that the Department shall act on all permits to prevent an increase in pollution of the waters and air of the State from any new or enlarged sources.
- R.61-43.200.80 Altered the setback distances from property lines to include a setback from the nearest residence of 1000 feet. Also, these property line setbacks are no longer considered minimum setbacks but absolute setbacks. The graduated scale for setbacks was also altered to be consistent with the weights classifying small and large facilities. Added an exemption from setbacks for farm ponds owned by the applicant with no connection to other surface waters.
- R.61-43.200.80 Added new Dry Animal manure and other animal by-products Treatment and Storage Facility Siting Requirements. These are the siting requirements for stacking sheds and composters permitted by the Department. These types of structures were not addressed in the existing regulation.
- R.61-43.200.180 Large animal facilities will be required to submit an annual report. The Department may require small animal facilities to submit annual reports on a case-by-case basis.
- R.61-43.200.190 Added new training requirements to Part 200. All operators of animal facilities and manure utilization areas must attend the training course created by Clemson. Operators of new facilities and large animal facilities must pass a certification exam given by Clemson. Time frames for obtaining the training and/or certification are included in this part.
- R.61-43.300.30 Removed the requirement that limits the Department when considering a reduction of requirements only to those not set forth in the Swine Act, since the 1996 Swine Act will be repealed with the passing of these regulations. Added that the setbacks in Part 100 may also be reduced (excluding those for large swine facilities) as the Department determines appropriate when a new or innovative technology is being proposed.
- R61-43.300.40. Added some additional items to the list of alternative technologies; Composting manure solids, Bioreactors, Covered liquid or slurry manure storage, Air Scrubbers, Ozonation, and Alternative Fuels.
- R61-43. 300.50 Added a new section to address “Exceptional Quality Compost.” Added language to address what requirements must be met in order for compost to qualify as exceptional quality. The Department may allow a marketing proposal with some reductions in

manure transfer and land application regulatory requirements, if the compost meets these quality standards.

Issue (5): *Add a new section that specifically outlines requirements for manure broker operations, as well as a section that addresses integrator registration, and a section for severability;*

| <u>SECTION</u> | <u>CHANGE</u> |
|-----------------|---|
| R61-43.Part 400 | Added this new part to outline requirements for manure brokers. Manure brokers are persons who accept manure or dry animal waste from agricultural animal facilities, and then transfer this product to a third party for land application. This Part 400 applies to brokers who operate in the State of South Carolina and any out of state broker who moves animal manure or waste into or out of this state. |
| R61-43.400.20 | Added requirements for the broker to notify the Department in writing and receive written approval, prior to any change in operational procedures. |
| R.61-43.400.30 | Added a list of other regulations, which may also apply to manure brokers. |
| R61-43.400.40 | Added a section entitled Permit Application Procedures (Broker Nutrient Management Plan Submission Requirements), which outlines the information required with a permit application. Requirements include: contact information, storage or treatment facility design information (if applicable), general crop management plan, description of services, description of equipment, sample contracts, odor abatement plan, vector abatement plan, soil monitoring plan, and application and operating fees. |
| R61-43.400.50 | Added requirements for permit issuances, a notice will be published in a local newspaper of general circulation in the area of the broker's base of operations. The SC Administrative Procedures Act and the State's Administrative Law Judge Division govern appeals. Broker Permits must be renewed every five years. The Department will review the broker's records and determine if any "permanent" manure utilization areas need to be added to the Nutrient Management Plan. All persons who "routinely" accept waste from the broker must be added to the Broker's management plan. Added requirements for authorization to operate, certification of construction (if applicable), permit renewal, and permit issue, effective and expiration dates. |
| R.61-43.400.60 | Added requirements for manure utilization areas covered under the broker's permit. Outlines the constituents that dry waste should be analyzed for. Mortality must be removed from dry waste prior to land application. Includes a list of items that must be included in the manure transfer contract between the broker and the person who accepts or purchases the manure. Added the land application requirements (including proper application methods and setbacks) from Part 200. |
| R61-43.400.70 | Included requirements that allow the Department to impose additional requirements on a case-by-case after considering the site conditions. Added requirements that deal with animal manure removal restrictions by a manure broker from a quarantined farm, and animal medical waste may not be land applied with animal waste. |
| R61-43.400.80 | Added odor control requirements for broker manure applications and manure storage facilities operated by brokers. |
| R61-43.400.90 | Added vector control requirements for broker manure applications and manure storage facilities operated by brokers. |

8 FINAL REGULATIONS

- R61-43.400.100 Added requirements for the broker to keep the following animal manure records for eight years: all completed manure transfer contracts, names and address information for all the producers from whom the broker obtains the waste, the amount of a waste obtained at each facility, sampling results for the waste obtained, and dates of transfer.
- R61-43.400.110 Added requirements for the broker to report to the Department on an annual basis a manure balance sheet which lists all the farms from which manure was purchased or obtained and the amount, and all the farms to which waste was sold or given and the amount.
- R61-43.400.120 Added a requirement for brokers to be certified in the poultry manure operator certification program developed by Clemson.
- R.61-43.400.130 Violations. Same as Part 200 violations.
- R61-43.500.10 Added a new part to address integrators operating in the state. Added language to encourage integrators to be involved with the permitting and compliance of their growers, to assist growers in the disposal of dead animals and the proper utilization of animal manure, and require them to inform each prospective grower that they are required by law in the State of South Carolina to obtain a permit from the Department prior to construction of an agricultural animal facility.
- R61-43.500.20 Added requirements for integrators to submit to the Department a Request for Registration form, as provided by the Department. The integrator must work with the Department to identify growers that are unpermitted. Added language that may allow permittees to qualify to use one analysis for their individual testing requirement, if the growers within a company use the same feed rations and have animal manure analysis that come out to be consistently the same. Added language to allow an integrating company to certify through general feed composition reports that a certain constituent, such as arsenic, is not present in their feed or medications, then the growers that contract with that integrator may be exempt from testing for that constituent. Added a requirement for integrators to submit a plan addressing cumulative environmental and public health impacts of their contracted facilities with the submittal package. The plan must cover the growth projected for that integrator within the next three years.
- R61-43.500.30 Added language that the Department will issue a certificate of integrator registration to integrators or integrating companies that meet all the requirements of this part. All integrators or integrating companies must hold a valid certificate of registration to operate in the state of South Carolina. The certificate may be revoked if the requirements of this part are not met.
- R61-43.500.40 Added language that the Department may establish reporting requirements for integrators. These reporting requirements may include General feed composition reports, and a list of any special treatments or chemicals added to the manure or manure storage structure, that are required by the integrator.
- R61-43.500.50 Added a requirement that an integrator or integrating company must not provide animals to an animal facility that does not hold a valid agricultural permit from the Department. The integrator must take reasonable steps to insure that the animal facilities that are under contract with the company are in compliance with their permit to include notifying growers of their responsibility to update their Animal Facility Management Plan and permit if changes are made in the operation of the farm, and providing information on

technical assistance to its growers on compliance and assist the producers in selecting a corrective action.

R.61-43.500.60 Violations. Same as Part 200 violations.

R.61-43.600 Added new part to address severability. Should a section, paragraph, sentence, clause, phrase, or other part of this regulation be declared invalid for any reason, the remainder shall not be affected.

Issue (6): Incorporate recommendations made by a Regulation Development Committee, which was organized to review the regulation for issues and concerns.

SECTION

CHANGE

R.61-43 Replaced the word “waste” with the word “manure” or “manure and other animal by-products”. Replaced the phrase “Waste Management Plan” with “Animal Facility Management Plan”. Replaced the phrase “use or disposal” with “utilization” in areas where appropriate.

R.61-43 Added some additional wording throughout the regulation for clarity.

R.61-43.100.10, 200.10 Restructured this section to organize it into 4 subsections: Purpose; Applicability; Inactive Facilities; and Facilities Permitted Prior to the Effective Date of Regulation. Moved some of the existing requirements to organize into the new subsection to address Inactive Facilities.

R.61-43.100.10, 200.10 Added new requirement that facilities that were “Deemed Permitted” by the 1998 regulations do not have to apply for a permit under these regulations, but these facilities must meet parts of this regulation as specified in this section. The only requirements omitted from this listing were requirements, which deal with new construction, siting criteria, and design criteria.

R.61-43.100.10, 200.10 Added provisions for permitting facilities that were constructed and placed into operation prior to 1996, but have never received an agricultural permit from the Department.

R.61-43.100.10, 200.10 Added the requirement that an existing facility permitted prior to July 1996 may be required to obtain an updated Animal Facility Management Plan on a case-by-case basis by the Department.

R.61-43.100.10, 200.10 Added new requirement that existing small swine facilities that propose to expand or increase animal numbers such that they are in a new facility size class, the facility will be required to meet all the requirements for that size facility.

R.61-43.100.20, 200.20 Added statement for clarity that permits issued under this regulation are no-discharge permits. Added requirement that some permit modifications may require the permittee to obtain new written waivers for setback reductions.

R.61-43.100.30, 200.30 Changed the poundage based exemptions to refer to swine and other animal facilities that do not have a lagoon or waste storage pond or liquid manure treatment system, to comply with the Pollution Control Act. Added an exemption for facilities that do not produce swine or other animals commercially. Added some new language to allow replacement in kind of permitted facilities due to damage. Added some additional language to clarify the ranged facility exemption.

10 FINAL REGULATIONS

- R.61-43100.40, 200.40 Added the following regulation to the list entitled "Relationship to other regulations": Regulation 61-68, Water Classifications and Standards.
- R.61-43.100.50, 200.50 Added some new language to address Preliminary Site Evaluations and verifying land use and local zoning in the area of the proposed facility. Added specific criteria for what information must be included in the land application agreement between the permittee and a person who accepts manure from the facility.
- *R.61-43.100.50, 200.50 The word "approximate" was removed from the requirement, which states that the permittee must submit maps that outline the location of the floodplain.
- R.61-43.100.50, 200.50 Moved the specific odor abatement plan requirements to Part 100.150 and 200.150 "Odor Control Requirements." Moved the specific vector abatement plan requirements to the NEW Part 100.160 and 200.160 "Vector Control Requirements." Moved the incinerator permitting exemption requirements to 100.130 and 200.130 "Dead Animal Disposal Requirements." Moved the specific soil monitoring requirements to part 100.100 and 200.100 "Manure Utilization Area Requirements." Moved wording to specify the notification requirements to the NEW Section 100.60 and 200.60 "Public Notice Requirements."
- R61-43.100.60, 200.60 Changed the notification radius from "1000 feet from the facility's property line" to "1/4 mile (1320 feet) from the proposed facility's footprint of construction." Also, added the requirement for the Department to post up to four notices. Added language to address notification of multiple heirs or owners of a property, comments received by E-mail, notifications of permit decisions to groups and persons signing petitions, notification requirements for expansions of existing facilities, and for permit denials. Added the specific information that the Department will provide in a public notice.
- R.61-43.100.70, 200.70 Added new language to address the Department's involvement in zoning and land use planning. Moved list of factors from Parts 100.80 and 200.80 to 100.70 and 200.70 that the Department considers when determining if the minimum setbacks should be increased. Added new language to address construction expiration dates, final permit expiration dates, renewals, and extensions.
- R61-43.100.80, 200.80 Altered the minimum setback requirement for wells, serving humans or animals, to be consistent with Regulation 61-71, Well Standards. Added some new language that will allow the setbacks required from ephemeral and intermittent streams to be reduced by the Department, if a permanent vegetative buffer that meets NRCS standards at a minimum is installed and maintained. The vegetative buffer, if utilized, for large swine facilities must be at least 50 feet wide. Altered the requirements to no longer allow any new animal facility or an expansion of an established animal facility to be located in the 100-year floodplain. Specified that the setbacks from waters, streams, and ditches apply to those located down slope from the facility. However, some new separation distances for waters, streams and ditches located up slope were added for the large swine facilities. Excluded ditches that were constructed and installed around the facility site in order to drain rainwater away from the buildings appropriately (this rain water does not come into contact with animals or manure). Specified that all lagoon and manure storage pond setbacks contained in this part shall be measured from the outside toe of the dike.
- R.61-43.100.90, 200.90 Added new language to deal with appropriate lagoon design and installation. Added specific language to the lagoon design criteria and increased the freeboard requirement from one foot to one and one-half foot. Altered the lagoon liner design criteria to be

based upon initial specific discharge rather than permeability rate, and added a standard reference for design and installation of geomembrane liners. Added some of the standard special conditions utilized in permits to the regulation that deal with fences, warning signs, vegetation on dikes, and animal grazing around lagoons.

- *R.61-43.100.90, 200.90 Restored the original language that requires annual sampling of groundwater monitoring wells at large swine facilities, unless the Department requires more frequent sampling in the permit conditions. Large swine facilities with 1,000,000 pounds or more normal production live weight are required to sample groundwater monitoring wells quarterly.

- R61-43.100.100, 200.100 Added the requirement that manure application shall not exceed the agronomic rate of application for plant available nitrogen (PAN) for the intended crop(s) on an annual basis. For those years that fertilizer is land applied, manures in combination with the fertilizer shall not exceed the agronomic rate of nutrient utilization of the intended crop(s).

- R61-43.100.100, 200.100 The deep soil sampling requirement depths were changed from four feet to eighteen inches in order to simplify sampling. Added specific determinations for amounts (more than 12 tons/recipient/year) of manure transferred to another party that must be a part of the Animal Facility Management Plan. Added some of the standard special conditions utilized in permits to the regulation that deal with timing of manure applications, nuisance complaints, manure application areas located in the floodplain, manure storage, and manure contract disposal with a licensed broker. Added that the Department may require periodic monitoring of any wet weather ditches or perennial streams which are in close proximity to any manure utilization areas.

- R61-43.100.100, 200.100 Added some additional language to specify that the separation distance to the seasonal high water table is to be considered at the “time of application” of manure to utilization areas. Also added the following language to clarify the requirement, “For special cases, no land application can occur when the vertical separation from the ground surface to the water table is less than 1.5 feet at the time of application unless a situation is deemed an emergency with departmental concurrence.”

- R61-43.100.100, 200.100 Changed the term “should” to “shall” when referring to manure application being restricted in the floodplain when a flood event is forecasted.

- R.61-43.100.100, 200.100 Altered the setback for manure utilization areas from property lines. The setback will no longer be 200 feet from the property line, but 300 feet from residences. Also, added a setback waiver for those permittees utilizing subsurface injection systems.

- R61-43.100.110, 200.110 Added new language to address adverse groundwater impact and drift of manure from spray application systems.

- R61-43.100.130, 200.130 Requires permittees to address excessive mortality situations in the dead animal disposal plan. Added some additional requirements for dead animal burial to allow for a comprehensive geologic review. Removed requirement that composters must be designed to NRCS standards, in order to allow for private engineers to submit alternative composter designs for review and consideration.

- R61-43.100.140, 200.140 Added language that addresses when the Department may require additional or more stringent requirements: source water protection; 303(d) impaired water bodies list; proximity to Outstanding Resource Waters, trout waters, shellfish waters, or critical habitat waters; and Aquifer Vulnerability Area. Added a new requirement that permittees

12 FINAL REGULATIONS

must notify the Department when they have a discharge from the facility. Added several standard special conditions in permits that deal with corrective action for nuisances, all-weather access roads, and transporting manure.

R61-43.100.150, 200.150 Added a list of specific actions for “methods in handling and storage of odorous materials that minimize emissions.” Added a list of specific actions for “prescribed standards in the maintenance of premises to reduce odorous emissions.”

R61-43.100.160, 200.160 Added a new section to the regulation to address Vector Control Requirements. This section outlines the requirements for a vector abatement plan, and gives some corrective actions that the Department may require in the event of a problem.

R61-43.100.170, 200.170 Added wording to address record keeping for deemed permitted facilities.

R61-43.100.180, 200.180 Specified that all large swine and large animal operations shall submit annual reports, on a form approved by the Department. Other facilities may be required to submit annual reports, on a case-by-case basis.

R61-43.100.180, 200.180 Added that the Department may establish permit conditions to require a facility to complete and submit a comprehensive report every five years. The Department shall review this report to confirm that the permitted nutrient application rates have not been exceeded. Based on the results of the review, additional soil and/or groundwater monitoring requirements, permit modification, and/or corrective action may be required.

R61-43.100.180, 200.180 Added a new requirement that addresses false reporting and tampering with monitoring devices. The language was modeled after similar language in regulation 61-9.

R61-43.100.190, 200.190 Specified that all new and existing facilities must have operators who have attended the training course by Clemson. Large facilities must have operators that completed the training program and passed the certification exam. Added some time frames for obtaining training and/or certification.

Instructions: Replace existing R.61-43, Standards for the Permitting of Agricultural Animal Facilities, in its entirety by this amendment.

Text:

R.61-43, Standards for the Permitting of Agricultural Animal Facilities

Part 50 - General Definitions

Part 100 - Swine Facilities

- 100.10 Purpose, Applicability, Inactive Facilities, and Facilities Permitted Prior to the Effective Date of Regulation.
- 100.20 Permits and Compliance Period.
- 100.30 Exclusions.
- 100.40 Relationship to Other Regulations.
- 100.50 Permit Application Requirements (Animal Facility Management Plan Submission Requirements).
- 100.60 Public Notice Requirements.
- 100.70 Permit Decision Making Process.
- 100.80 Swine Facility, Lagoon, Treatment System, and Manure Storage Pond Siting Requirements.
- 100.90 General Requirements for Swine Manure Lagoons, Treatment Systems, and Swine Manure Storage Ponds.
- 100.100 Manure Utilization Area Requirements.
- 100.110 Spray Application System Requirements.
- 100.120 Frequency of Monitoring for Swine Manure.
- 100.130 Dead Swine Disposal Requirements.
- 100.140 Other Requirements.
- 100.150 Odor Control Requirements.
- 100.160 Vector Control Requirements.
- 100.170 Record Keeping.
- 100.180 Reporting.
- 100.190 Training Requirements.
- 100.200 Violations

Part 200 - Animal Facilities (other than swine)

- 200.10 Purpose, Applicability, Inactive Facilities and Facilities Permitted Prior to the Effective Date of Regulation.
- 200.20 Permits and Compliance Period.
- 200.30 Exclusions.
- 200.40 Relationship to Other Regulations.
- 200.50 Permit Application Requirements (Animal Facility Management Plan Submission Requirements).
- 200.60 Public Notice Requirements.
- 200.70 Permit Decision Making Process.
- 200.80 Facility, Lagoon, Treatment System, and Manure Storage Pond Siting Requirements.
- 200.90 General Requirements for Animal Manure Lagoons, Treatment Systems, and Animal Manure Storage Ponds.
- 200.100 Manure Utilization Area Requirements.
- 200.110 Spray Application System Requirements.
- 200.120 Frequency of Monitoring for Animal Manure.
- 200.130 Dead Animal Disposal Requirements.
- 200.140 Other Requirements.
- 200.150 Odor Control Requirements.
- 200.160 Vector Control Requirements.
- 200.170 Record Keeping.
- 200.180 Reporting.
- 200.190 Training Requirements.
- 200.200 Violations.

Part 300 - Innovative and Alternative Technologies

14 FINAL REGULATIONS

- 300.10 General.
- 300.20 Submittal Requirements.
- 300.30 Requirements in Lieu of Requirements Under Part 100 and Part 200.
- 300.40 Innovative and Alternative Treatment Technologies.
- 300.50 Exceptional Quality Compost.
- 300.60 Public Notice Requirements.
- Part 400 - Manure Broker Operations.
 - 400.10 Purpose and Applicability.
 - 400.20 Permits and Compliance Period.
 - 400.30 Relationship to Other Regulations.
 - 400.40 Permit Application Requirements (Broker Management Plan Submission Requirements).
 - 400.50 Permit Decision Making Process.
 - 400.60 Manure Utilization Area Requirements.
 - 400.70 Other Requirements.
 - 400.80 Odor Control Requirements.
 - 400.90 Vector Control Requirements.
 - 400.100 Record Keeping.
 - 400.110 Reporting.
 - 400.120 Training Requirements.
 - 400.130 Violations.
- Part 500 - Integrator Registration Program.
 - 500.10 General.
 - 500.20 Submittal Requirements.
 - 500.30 Certificate of Integrator Registration.
 - 500.40 Reporting.
 - 500.50 Other Requirements.
 - 500.60 Violations.
- Part 600 - Severability

Part 50 - General Definitions. For purposes of this regulation, the following definitions apply:

- A. "Agricultural animal" means an animal confined in an agricultural facility.
- B. "Agricultural facility" means a lot, building, or structure, which is used for the commercial production of animals in an animal facility.
- C. "Agronomic rate" is the animal manure and other animal by-products application rate designed: (1) to provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, cover crop, or vegetation grown on the land and (2) to minimize the amount of nitrogen in the animal manure that passes below the root zone of the crop or vegetation grown on the land to the groundwater and (3) to provide the amount of other organic and inorganic plant nutrients which promote crop or vegetative growth, such as calcium-carbonate equivalency and (4) to provide the amount of phosphorus needed by the crop or vegetation grown on the land without causing an excessive build up of phosphorus in the soil.
- D. "Animal" means any domesticated animal.
- E. "Animal by-product" means a secondary or incidental product of animal production that may include bedding, spilled feed, water or soil, milking center washwater, contaminated milk, hair, feathers, dead animals or other debris. This definition may also refer to dead animal or animal manure compost.
- F. "Animal facility" means an agricultural facility where animals are confined and fed or maintained for a total of forty-five days or more in a twelve-month period and crops, vegetative, forage growth, or post harvest residues are not sustained in the normal growing season over any portion of the lot or facility. Structures used for

the storage of animal manure and other animal by-products from animals in the operation also are part of the animal facility. Two or more animal facilities under common ownership or management are considered to be a single animal facility if they are adjacent or utilize a common system for animal manure storage.

G. "Animal Facility Management Plan" means a plan prepared by the United States Department of Agriculture's Natural Resources Conservation Service or a professional engineer detailing the management, handling, treatment, storage, or utilization of manure generated in an animal facility. This plan shall include facility management details and a detailed map of each manure utilization area showing all buffer zones and setbacks, a description of the land use, the crops grown on the site, the timing for application of swine manure to the land and a land use agreement if the site is not owned by the permittee.

H. "Animal manure" means animal excreta or other commonly associated organic animal manures including, but not limited to, bedding, litter, feed losses, or water mixed with the manure.

I. "Annual animal manure application rate" is the maximum amount of animal manure that can be agronomically applied to a unit area of land during any 365-day period.

J. "Annual constituent loading rate" means the maximum amount of a constituent that can be applied to a unit area of a manure utilization area during any 365-day period.

K. "Average animal live weight" means the sum of the average exit weight of the animal from the facility and the average entry weight divided by two, as shown by the following formula:

$$\text{Average animal live weight} = (\text{Average Exit Weight} + \text{Average Entry Weight})/2$$

L. "Broker" means a person who accepts or purchases dry animal manure from agricultural facilities and transfers this product to a third party for land application.

M. "Closed facility" means an animal facility that has ceased operations (no confined animals at the facility) and is no longer in production.

N. "Commercial Facility" means an animal facility that produces animals or animal by-products for commercial sale, boards animals, rents animals, or provides a service utilizing the animals for a fee. The facility is considered commercial if the owner earned at least one thousand dollars gross farm income in at least three of the first five years.

O. "Compost" is an organic soil conditioner that has been stabilized to a humus-like product, is free of viable human and plant pathogens and plant seeds, does not attract insects or vectors, can be handled and stored without nuisance, and is beneficial to the growth of plants.

P. "Composting" is the biological decomposition and stabilization of organic substrates, under conditions that allow development of thermophilic temperatures as a result of biologically produced heat, to produce a final product that is stable, free of pathogens and plant seeds, and can be beneficially applied to land. Composting requires special conditions of moisture and aeration to produce thermophilic temperatures.

Q. "Constituent limit" is a numerical value that describes the amount of a constituent allowed per unit amount of animal manure (e. g., milligrams per kilogram of total solids); the amount of a constituent that can be applied to a unit area of land (e. g., pounds per acre); or the volume of a material that can be applied to a unit area of land (e.g., gallons per acre).

R. "Cover crop" is a small grain crop, including, but not limited to, oats, wheat, or barley; grasses; or other crop grown for agronomic use or to maintain topsoil and prevent soil erosion.

16 FINAL REGULATIONS

S. "Cumulative constituent loading rate" means the maximum amount of a constituent that can be applied to an area of land.

T. "Cumulative impacts" means an increase or enlarging of impact to the environment or community by the successive addition or accumulation of animal facilities in an area.

U. "CWA" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub. L. 92-500, as amended by Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483, and Pub. L. 97-117, 33 U.S.C. 1251 et seq. Specific references to sections within the CWA shall be according to Pub. L. 92-500 notation.

V. "Deemed Permitted Facility" means an agricultural animal facility that held a valid permit from the Department for their swine facility prior to July 1, 1996, or for their animal facility prior to June 26, 1998.

W. "Department" means the South Carolina Department of Health and Environmental Control.

X. "Dry manure" means manure, bedding, litter, feed losses, or composted animal material (animal manure or dead animals) that is not in a liquid form. Dry animal manure can normally be easily handled with a shovel or other similar equipment and it can be placed in piles without liquid manure or leachate drainage occurring.

Y. "Dry weight basis" means calculated on the basis of having been dried at 105 degrees Celsius until reaching a constant mass (i.e., essentially 100 percent solids content).

Z. "EPA" means the United States Environmental Protection Agency.

AA. "Ephemeral stream" means a stream that flows only in direct response to rainfall or snowmelt in which discrete periods of flow persist no more than twenty-nine consecutive days per event.

BB. "Excessive Mortality" means total animal mortality in any one 24-hour period that exceeds the design capacity of the normal method of dead animal disposal.

CC. "Expansion" means an increase in the permitted number of animals or normal production live weight at the facility that will result in physical construction at the facility. For facilities with a lagoon, treatment system or manure storage pond, expansion means an increase due to construction in the maximum capacity of the existing lagoon, treatment system or manure storage pond as determined using the appropriate design standards of the United States Department of Agriculture's Natural Resource Conservation Service. An Animal manure treatment lagoon that is converted to animal manure storage pond is considered an expansion of the facility. For facilities permitted prior to 1998, where the treatment/storage design function was not clearly specified, the Department shall review the facility's operation records and compliance history to determine the current function and condition of the manure handling structures. If the existing structure can handle additional animals, without physical alteration, significant changes in the original function of the structure, or any significant increase in odor, the Department may allow this increase in animals without classifying the change as an expansion.

DD. "FEMA" means the Federal Emergency Management Agency.

EE. "Feed crops" are crops produced primarily for consumption by animals. These include, but are not limited to: corn, grains, and grasses.

FF. "Fiber crops" are crops including, but not limited to, flax and cotton.

GG. "Floodplain" means land adjacent to water bodies that periodically becomes temporarily inundated with water during or after rainfall events. The land inundated from a flood whose peak magnitude would be

experienced on an average of once every 100 years is the 100-year floodplain. The 100-year flood has a 1% probability of occurring in one given year.

HH. "Food crops" are crops produced primarily for human consumption. These include, but are not limited to, fruits, vegetables, and tobacco.

II. "Groundwater" is water below the land surface in the saturated zone.

JJ. "Integrator" or "Integrating company" means any entity or person(s) who contracts with agricultural animal producers to grow animals to be supplied to this person(s) at the time of removal from the animal growing houses or facilities and exercises substantial operational control over an animal facility along with the owner/operator of the facility. Substantial operational control includes, but is not limited to, the following: directs the activities of persons working at the animal facility either through a contract, direct supervision, or on-site participation; owns the animals; or specifies how the animals are grown, fed, or medicated. This definition does not include independent producers that contract with other independent producers to accomplish a portion of the animal growing process under contract.

KK. "Intermittent stream" means a stream that generally has a defined natural watercourse, which does not flow year-round but flows beyond periods of rainfall or snowmelt.

LL. "Lagoon" means an impoundment used in conjunction with an animal facility, the primary function of which is to store or stabilize, or both, manure, organic wastes, wastewater, and contaminated runoff.

MM. "Land application" is the spraying or spreading of manure onto the land surface; the injection of manure below the land surface into the root zone; or the incorporation of manure into the soil so that the manure can either condition the soil or fertilize crops or vegetation grown in the soil.

NN. "Large Animal Facility" means an animal facility (excluding swine facilities) that has a capacity for more than 500,000 pounds of normal production animal live weight at any one time.

OO. "Large Swine Facility" means a swine facility with a capacity for greater than 500,000 pounds of normal production animal live weight at any one time.

PP. "Liquid manure" means manure that by its nature, or after being diluted with water, can be pumped easily and which is removed either intermittently or continuously from an animal lagoon, manure storage pond or treated effluent from other types of animal manure treatment systems.

QQ. "Manure" means the fecal and urinary excretion of livestock and poultry. This material may also contain bedding, spilled feed, water or soil. It may also include wastes not associated with livestock excreta, such as milking center washwater, contaminated milk, hair, feathers, or other debris. Manure may be described in different categories as related to solids and moisture content, such as dry manure and liquid manure.

RR. "Manure storage pond" means a structure used for impounding or storing manure, wastewater, and contaminated runoff as a component of an agricultural manure management system. Manure is stored for a specified period of time, one year or less, and then the pond is emptied. This definition does not include tanks or other similar vessels.

SS. "Manure utilization area" means land on which animal manure (including swine manure) is spread as a fertilizer and is synonymous with land application site or land application area.

TT. "mg/l" means milligrams per liter.

18 FINAL REGULATIONS

UU. "NRCS" is the Natural Resources Conservation Service of the United States Department of Agriculture.

VV. "NRCS-CPS" is the Natural Resources Conservation Service's Conservation Practice Standards as given in the USDA-NRCS, SC Handbook of Conservation Practices.

WW. "Normal production animal live weight at any one time" means the maximum number of animals at the facility at any one time multiplied by the average animal live weight of those animals.

XX. "Nuisance" means a condition causing danger or annoyance to a limited number of persons or to the general public.

YY. "Pasture" is land on which animals feed directly on feed crops including, but not limited to, legumes, grasses, grain stubble, or stover.

ZZ. "Person" means any individual, public or private corporation, political subdivision, association, partnership, corporation, municipality, State or Federal agency, industry, copartnership, firm, trust, estate, any other legal entity whatsoever, or an agent or employee thereof.

AAA. "Potable water well" means any well designed and/or constructed to produce potable water for consumption by humans or animals.

BBB. "Producer" is a person who grows or confines animals; a person responsible for the manure produced at an animal facility; a person processing manure; and/or a person responsible for the land application of manure.

CCC. "Professional Engineer" or "Engineer" is a person who, by reason of his special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design, acquired by professional education and practical experience, is qualified to practice engineering, all as attested by his legal registration as a professional engineer in this State.

DDD. "Range land" is open land with indigenous vegetation.

EEE. "Residence" means a permanent inhabited dwelling, any existing church, school, hospital, or any other structure which is routinely occupied by the same person or persons more than twelve hours per day or by the same person or persons under the age of eighteen for more than two hours per day, except those owned by the applicant.

FFF. "Runoff" is rainwater or other liquid that drains overland on any part of a land surface and runs off of the land surface.

GGG. "Seasonal High Water Table" is the surface between the zone of saturation and the zone of aeration, where the pore water pressure is equal to atmospheric pressure, and which exhibits the shallowest average water depth in relation to the surface during the wettest season.

HHH. "Small Animal Facility" means an animal facility (other than swine) that has a capacity for 500,000 pounds of normal production animal live weight or less at any one time.

III. "Small Swine Facility" means a swine facility with a capacity for 500,000 pounds of normal production animal live weight or less at any one time.

JJJ. "Source Water Protection Area" means an area either above and/or below ground that is the source of water for a public drinking water system via a surface water intake or a water supply well that is designated by the State for increased protection.

KKK. “State” means the State of South Carolina.

LLL. “Swine” means a domesticated animal belonging to the porcine species.

MMM. “Swine by-product” means a secondary or incidental product of swine production that may include bedding, spilled feed, water or soil, milking center washwater, contaminated milk, hair, feathers, dead swine or other debris. This definition may also refer to dead swine or swine manure compost.

NNN. “Swine facility” means an agricultural facility where swine are confined and fed or maintained for a total of forty-five days or more in a twelve-month period and crops, vegetative, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. Structures used for the storage of swine manure from swine in the operation also are part of the swine facility. Two or more swine facilities under common ownership or management are considered to be a single swine facility if they are adjacent or utilize a common system for swine manure treatment and/or storage. For any new or expanding swine facility, the combined normal production of all swine facilities owned by the producer, and of all swine facilities owned by corporations having a common majority shareholder in common with the producer, within twenty five miles of the new or expanding facility shall be used to determine the normal production of the new or expanding facility. For example, when a new facility has a proposed capacity of 300,000 pounds of normal production and the producer owns two other swine facilities within twenty-five miles of the new or expanding swine facility and the normal production of each facility is 400,000 pounds, the proposed swine facility’s normal production is 1,100,000 (300,000 + 400,000 + 400,000) pounds.

OOO. “Swine manure” means swine excreta or other commonly associated organic animal manures including, but not limited to, bedding, litter, feed losses, or water mixed with the manure.

PPP . “µg/l” means microgram per liter.

QQQ. “Vector” means a carrier that is capable of transmitting a pathogen from one organism to another including, but not limited to, flies and other insects, rodents, birds, and vermin.

RRR. “Wastewater” means any water which during the confinement of animals or the handling, storage, or treatment of manure, dead animals, litter, etc. comes into contact with the animals, manure, litter, spilled feed, etc. Wastewater includes, but is not limited to, wash waters, contaminated milk, and storm water (except storm water runoff from land application areas where the application of manure has been properly applied) that comes into contact with manure.

SSS. “Watershed” means a drainage area contributing to a river, lake, or stream.

TTT. “Waters of the State” means lakes, bays, sounds, ponds, impounding reservoirs, springs, artesian wells, rivers, perennial and navigable streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial limits of the State, and all other bodies of water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially within or bordering the State or within its jurisdiction. This definition does not include ephemeral or intermittent streams. This definition includes wetlands as defined in this section.

UUU. “Wetlands” means lands that have a predominance of hydric soil, are inundated or saturated by water or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions, and, under normal circumstances, do support a prevalence of hydrophytic vegetation. Normal circumstances refer to the soil and hydrologic conditions that are normally present without regard to whether the vegetation has been removed. Wetlands shall be identified through the confirmation of the three wetlands criteria: hydric soil, hydrology, and hydrophytic vegetation. All three criteria shall be met for an area to be identified as wetlands. Wetlands generally include swamps, marshes, and bogs.

20 FINAL REGULATIONS

Part 100 - Swine Facilities

100.10 Purpose, Applicability, Inactive Facilities, and Facilities Permitted Prior to the Effective Date of Regulation.

A. Purpose.

1. To establish standards for the growing or confining of swine, processing of swine manure and other swine by-products, and land application of swine manure and other swine by-products in such a manner as to protect the environment, and the health and welfare of citizens of the State from pollutants generated by this process.

2. To establish standards, which consist of general requirements, constituent limits, management practices, and operational standards, for the utilization of swine manure and other swine by-products generated at swine facilities. Standards included in this part are for swine manure and other swine by-products applied to the land.

3. To establish standards for the frequency of monitoring and record keeping requirements for producers who operate swine facilities.

4. To establish standards for the proper operation and maintenance of swine facilities.

5. To establish criteria for swine facilities and manure utilization areas location as they relate to protection of the environment and public health and welfare as outlined by statute. The location of swine facilities and manure utilization areas as they relate to zoning in an area is not covered in this regulation. Local county or municipal governments may have zoning requirements and these regulations neither interfere with nor restrict such zoning requirements. Permit applicants should contact local municipal and county authorities to determine any local requirements that may be applicable.

B. Applicability.

1. This part applies to:

- a. All new swine facilities;
- b. All expansions of existing swine facilities; and
- c. New manure utilization areas for existing swine facilities.

2. This part applies to all swine manure and other swine by-products applied to the land.

3. This part applies to all land where swine manure and other swine by-products are applied.

C. Inactive Facilities.

1. If a swine facility is closed for two (2) years or less, a producer may resume operations of the facility under the same conditions by which it was previously permitted by notifying the Department in writing that the facility is being operated again.

2. For swine facilities that have been closed for more than two years but less than five years, the Department shall review the existing permit and modify its operating conditions as necessary prior to the facility being placed back into operation.

3. For swine facilities that have been closed for more than five years, the producer shall properly close out any lagoon, treatment system or manure storage pond associated with the facility. The closeout shall be accomplished in accordance with Regulation 61-82. The permittee shall submit a closeout plan that meets at a minimum NRCS-CPS within a time frame prescribed by the Department. Additional time may be granted by the Department to comply with the closeout requirement or to allow a producer to apply for a new permit under this regulation, as appropriate.

4. If a swine facility closes for more than five years, the requirements under this part shall be met before the facility can resume operations.

D. Facilities Permitted Prior to the Effective Date of Regulation.

1. All existing swine facilities with permits issued by the Department before July 1, 1996 do not need to apply for a permit as they are deemed permitted (deemed permitted swine facilities) unless they have been closed for more than two years or expand operations. These facilities shall meet the following sections of Part 100: Section 100.20 (Permits and Compliance Period); Section 100.90 items A, G, and N - T (General Requirements for Lagoons, Treatment Systems and Manure Storage Ponds); Section 100.100 items B.1.-22. (Manure Utilization Area Requirements); Section 100.110.G.-J. (Spray Application System Requirement); Section 100.120 A,C, and D (Frequency of Monitoring for Swine Manure); Section 100.130 A,B, C item 2-3 (Dead Swine Disposal Requirements); Section 100.140 A, C-J (Other Requirements); Section 100.150 B-G (Odor Control Requirements); Section 100.160 B-D (Vector Control Requirements); Section 100.170 (Record Keeping); Section 100.180 (Reporting); Section 100.190 A. - F.(Training Requirements); and Section 100.210 (Violations). The capacity of a deemed permitted facility is the maximum capacity of the existing lagoon, treatment system or manure storage pond as determined using swine lagoon, treatment system or manure storage pond capacity design standards of the United States Department of Agriculture's Natural Resource Conservation Service.

2. All existing swine facilities with permits issued by the Department between July 1, 1996 and the effective date of these regulations do not need to apply for a new permit if they hold a valid permit from the Department, unless they have been closed for more than two years. These facilities shall meet all the requirements of these regulations.

3. All existing swine facilities that were constructed and placed into operation prior to July 1, 1996, but have never received an agricultural permit from the Department, shall apply for a permit from the Department. These facilities shall meet all the requirements of this regulation as the Department determines appropriate. The Department shall review the site and make a determination on a case-by-case basis on which requirements are applicable.

4. An existing facility may be required to submit for approval an updated Animal Facility Management Plan on a case-by-case basis by the Department. The Department shall notify the permittee in writing of this requirement. The permittee shall submit this updated plan within a time frame prescribed by the Department. Failure to submit the updated plan within this time frame is a violation of the Pollution Control Act and these regulations, and may result in permit revocation.

5. Both the setbacks and other requirements for manure utilization areas shall be met when a new manure utilization area is added by the owner of any swine facility regardless of when the facility was permitted.

6. If an existing facility regulated under Part 200 of these regulations proposes to convert to a swine facility, it shall be considered a new swine facility under these regulations. Converted facilities shall be permitted as new swine facilities and meet all criteria for new swine facilities before they begin operation as a swine facility.

22 FINAL REGULATIONS

7. If an existing swine facility proposes to expand operations or increase the number of permitted swine such that it falls into a new size classification, the facility shall be considered a new swine facility in that size classification under these regulations. The facility shall meet all the requirements for the new classification.

100.20 Permits and Compliance Period.

A. Permit Requirement. Swine manure and other swine by-products from a new or expanded swine facility can only be generated, handled, stored, treated, processed, or land applied in the State in accordance with a permit issued by the Department under the provisions of this part. Existing producers that are required by the Department to update their Animal Facility Management Plan shall meet the requirements of this part to the extent practical as determined by the Department.

B. Large Swine Facilities with 1,000,000 pounds or more normal production live weight must also apply for an individual National Pollutant Discharge Elimination System (NPDES) permit for Confined Animal Feeding Operations (CAFO) in accordance with the provisions of Regulation 61-9.

C. Permits issued under this regulation are no-discharge permits.

D. The requirements in this part shall be implemented through a permit issued to any producer who operates a swine facility where swine manure and other swine by-products are generated, handled, treated, stored, processed, or land applied.

E. The requirements under this part may be addressed in permits issued to producers who only land apply swine manure and other swine by-products.

F. Notification Requirements. The permittee shall notify the Department in writing and receive written Departmental approval, except as otherwise noted, prior to any change in operations at a permitted facility, including, but not limited to, the following:

1. Change in ownership and control of the facility. The Department has thirty days from the receipt of a notification of transfer of ownership to either: request additional information regarding the transfer or the new owner; deny the transfer; or approve the transfer of ownership. If the Department does not act within thirty days, the transfer is automatically approved. If additional information is requested by the Department in a timely manner, the Department shall act on this additional information, when it is received, within the same time period as the initial notification.

2. Increase in the permitted number of swine.

3. Increase in the normal production animal live weight of the existing permitted swine facility.

4. Addition of manure utilization areas.

5. Change in swine manure and other swine by-products treatment, handling, storage, processing or utilization.

6. Change in method of dead swine disposal.

G. Permit Modification. Permit modifications for items 100.20.F.3 and 100.20.F.5 for facilities regulated under this part which shall result in expansions shall adhere to the requirements of this part and other applicable statutes, regulations, or guidelines.

H. Permit modification for items 100.20.F.2-3 which result in an expansion may be required to obtain new written waivers or agreement for reduction of setbacks from adjoining property owners (if applicable).

100.30 Exclusions. The following do not require permits from this part unless specifically required by the Department under Section 100.30.G.

A. Existing swine facilities that are deemed permitted under Section 100.10.D.1. are excluded from applying for a new permit unless an expansion is proposed, a new manure utilization area is added, or it is required by the Department. New manure utilization areas added to an existing facility shall meet the appropriate requirements in this part. However, deemed permitted facilities shall meet the requirements of this regulation as outlined in Section 100.10.D.1. (Purpose, Applicability, Inactive Facilities, and Facilities Permitted Prior to the Effective Date of Regulation).

B. Except as given in Section 100.30.G, swine facilities that do not have a lagoon, manure storage pond or liquid manure treatment system having 10,000 pounds or less of normal production animal live weight at any one time are excluded from obtaining a permit from the Department. However, these facilities shall have and implement an Animal Facility Management Plan for their facility that meets the requirements of this regulation.

C. Except as given in Section 100.30.G, swine facilities that do not have a lagoon, manure storage pond or liquid manure treatment system having more than 10,000 pounds of normal production animal live weight at any one time and less than 30,000 pounds of normal production animal live weight at any one time are excluded from obtaining a permit from the Department. However, these facilities shall submit an Animal Facility Management Plan to the Department and implement an Animal Facility Management Plan for their facility that meets the requirements of this regulation.

D. Except as given in Section 100.30.G, ranged swine facilities where the size of the range area is sufficient to allow for natural degradation or utilization of the swine manure with no adverse impact to the environment are excluded from obtaining a permit from the Department. Ranged facilities shall also maintain adequate vegetative buffers between the swine range and waters of the State.

E. Except as given in Section 100.30.G, swine facilities that do not produce swine for commercial purposes are excluded from obtaining a permit from the Department.

F. Except as given in Section 100.30.G, swine facilities that hold valid permits issued by the Department are not required to obtain a new permit if they decide to replace in kind any of the swine growing houses. If the permittee chooses to leave the old swine houses in place to utilize for another purpose other than housing animals, the Department shall perform a preliminary site inspection for the proposed location of the replacement houses and approve the site prior to construction.

G. Facilities exempted under Sections 100.30.A, B, C, D, E and F may be required by the Department to obtain a permit. The Department shall visit the site before requiring any of these facilities to obtain a permit.

100.40 Relationship to Other Regulations. The following regulations are referenced throughout this part and may apply to facilities covered under this regulation.

A. Nuisances are addressed in Regulation 61-46.

B. Application and annual operating fees are addressed in Regulation 61-30.

C. The proper closeout of wastewater treatment facilities is addressed in Regulation 61-82. This includes swine lagoons and manure storage ponds.

24 FINAL REGULATIONS

D. Permitting requirements for concentrated animal feeding operations as defined by Regulation 61-9 are contained in Regulation 61-9.

E. Setbacks and construction specifications for potable water wells and monitoring wells shall be in accordance with Regulation 61-71.

F. Permits for air emissions from incinerators are addressed in Regulation 61-62.

G. Disposal of swine lagoon sludge in a municipal solid waste landfill unit is addressed in Regulation 61-107.258.

H. Disposal of swine manure with domestic or industrial sludge is addressed in Regulation 61-9.

I. Procedures for contested cases are addressed in Regulation 61-72 and Rules of the State's Administrative Law Judge Division.

J. Laboratory Certification is addressed in Regulation 61-81.

K. Water Classifications and Standards are addressed in Regulation 61-68.

100.50 Permit Application Procedures (Animal Facility Management Plan Submission Requirements).

A. Preliminary Site Evaluations. The Department shall perform a preliminary evaluation of the proposed site at the request of the applicant. Written requests for preliminary site inspection shall be made using a form, as designated by the Department. The Department shall not schedule a preliminary site inspection until all required information specified in the form has been submitted to the Department. This evaluation should be performed prior to preparation of the Animal Facility Management Plan. Once the preliminary site inspection is performed, the Department shall issue an approval or disapproval letter for the proposed site.

B. A producer who proposes to build a new swine facility or expand an existing swine facility shall make application for a permit under this part using an application form as designated by the Department. The following information shall be included in the application package.

1. A completed application form.

2. An Animal Facility Management Plan prepared by qualified Natural Resources Conservation Service personnel or a SC registered professional engineer. Other qualified individuals, such as soil scientists, etc., may prepare the land application component of an Animal Facility Management Plan. The Animal Facility Management Plan shall at a minimum contain:

a. Facility name, address, telephone number, county, and National Pollutant Discharge Elimination System Permit or other permit number (if applicable);

b. Facility location description and the zoning or land use restrictions in this area (this information is available from the county);

c. Applicant's name, address, and telephone number (if different from above);

d. Operator's name;

e. Facility capacity;

i. Number of swine;

- ii. Pounds of normal production animal live weight at any one time;
 - iii. Amount in gallons of swine manure generated per year;
 - iv. Description of swine manure storage and storage capacity of lagoon, treatment system, or manure storage pond (if applicable); and
 - v. Description of swine manure and other swine by-products treatment (if any).
- f. Concentration of constituents in swine manure including but not limited to the constituents given below:

- i. Nutrients.

- (a) Nitrate. (Only needed for aerobic treatment systems)
- (b) Ammonium-Nitrogen.
- (c) Total Kjeldahl Nitrogen (TKN).
- (d) Organic Nitrogen (Organic Nitrogen = TKN - Ammonium Nitrogen)
- (e) P₂ O₅.
- (f) K₂O (potash).

- ii. Constituents.

- (a) Copper.
- (b) Zinc.

iii. For new swine facilities, swine manure analysis information does not have to be initially submitted as the Department shall use swine manure analysis from similar sites or published data (such as: Clemson University, American Society of Agricultural Engineers, Midwest Planning Service Document, NRCS Technical Guide or equivalent) in the review of the application. Analysis of the actual swine manure generated shall be submitted to the Department six months after a new swine facility starts operation or prior to the first application of swine manure to a manure utilization area, whichever occurs first. If this analysis is significantly different from the estimated analysis used in the permitting decision, the Department may require a permit modification as necessary to address the situation. Analysis shall be conducted by a laboratory certified by the Department. This laboratory shall have and maintain certification for the constituents to be analyzed.

g. Swine manure and other swine by-products handling and application information shall be included as follows:

- i. A crop management plan which includes the time of year of the swine manure and other swine by-products application and how it relates to crop type, crop planting, and harvesting schedule (if applicable) for all manure utilization areas;

- ii. Name, address, and telephone number of the producer(s) that will land apply the swine manure and other swine by-products if different from the permittee;

26 FINAL REGULATIONS

iii. Type of equipment used to transport and/or spread the swine manure and other swine by-products (if applicable); and

iv. For spray application systems, plans and specifications with supporting details and design calculations for the spray application system.

h. Facility and manure utilization area information shall be included (as appropriate):

i. Name and address of landowner and location of manure utilization area(s);

ii. List previous calendar years that swine manure and other swine by-products were applied and application amounts, where available;

iii. Facility and manure utilization area location(s) on maps drawn to approximate scale including:

(a) Topography (7.5' minutes or equivalent) and drainage characteristics (including ditches);

(b) Adjacent land usage (within 1/4 mile of property line minimum) and location of inhabited dwellings and public places showing property lines and tax map number;

(c) All known water supply wells on the applicant's property and within 500 feet of the facility's footprint of construction or within 200 feet of any manure utilization areas;

(d) Adjacent waters of the State (including ephemeral and intermittent streams) or the nearest waterbody;

(e) Swine manure utilization area boundaries and buffer zones;

(f) Right-of-Ways (Utilities, roads, etc.);

(g) Soil types as given by soil tests or soil maps, a description of soil types, and boring locations (as applicable);

(h) Recorded Plats, Surveys, or other acceptable maps that include property boundaries; and

(i) Information showing the 100-year floodplain as determined by FEMA.

iv. For manure utilization areas not owned by the permit applicant, a signed agreement between the permit applicant and the landowner acceptable to the Department detailing the liability for the land application. The agreement shall include, at a minimum, the following:

(a) Producer's name, farm name and county in which the farm is located;

(b) Landowner's name, address, phone number;

C. Location (map with road names and county identified) of the land to receive manure application;

(d) Field acreage, acreage less setbacks, and crops grown;

(e) Name of manure hauler;

(f) Name of manure applier;

(g) A statement that land is not included in any other management plans and manure or compost from another farm is not being applied on this land; and

(h) A signed statement which informs the landowner that he is responsible for spreading and utilizing this manure in accordance with the requirements of the Department and Regulation 61-43.

v. For other manure utilization areas that are included in multiple Animal Facility Management Plans identify the names of all facilities that include this manure utilization area in their plan.

3. Groundwater monitoring well details and proposed groundwater monitoring program (if applicable).

4. The Animal Facility Management Plan shall contain an odor abatement plan for the swine facility, lagoon, treatment system, manure storage pond, and manure utilization areas. For more specific details, see Section 100.150 (Odor Control Requirements).

5. A Vector Abatement Plan shall be included for the swine facility, lagoon, treatment system, manure storage pond, and manure utilization areas. For more specific details, see Section 100.160 (Vector Control Requirements).

6. Dead Swine Disposal Plan. The plan shall include written details for handling and disposal of dead swine. Plans should include method of disposal, any construction specifications necessary, and management practices. See Section 100.130 for specific requirements on dead swine disposal.

7. Soil Monitoring Plan. A soil monitoring plan shall be developed for all manure utilization areas, see Section 100.100 (Manure Utilization Area Requirements) for more detailed information.

8. Plans and specifications for all other manure treatment or storage structures, such as holding tanks or manure storage sheds.

9. All "Notice of Intent to Build or Expand a Swine Facility" forms as provided by the Department and a tax map (or equivalent) to scale showing all neighboring property owners and identifying which property has inhabited dwellings that are required to be notified. See Section 100.60 (Public Notice Requirements) for more detailed information.

10. An Emergency Plan. The emergency plan shall at a minimum contain a list of entities or agencies the producer shall contact in the event of a structural failure (such as a dike/dam breach), major animal mortality, fire, flood or other similar type problem. For facilities in the coastal areas of the State, the emergency plan shall address actions to be taken by a producer during hurricane season (such as providing additional freeboard during that time) and when advance warning is given on any extreme weather condition.

11. All waivers as specified in Section 100.80 (Facility, Lagoon, Treatment System, and Manure Storage Pond Siting Requirements), if applicable.

12. Application fee and the first year's operating fee as established by Regulation 61-30.

C. The Department may request an applicant to provide any additional information deemed necessary to complete or correct deficiencies in the swine facility permit application prior to processing the application or issuing, modifying, or denying a permit.

D. Applicants shall submit all required information in a format acceptable to the Department.

28 FINAL REGULATIONS

E. An application package for a permit is complete when the Department receives all of the required information which has been completed to its satisfaction. Incomplete submittal packages may be returned to the applicant by the Department.

F. Application packages for permit modifications only need to contain the information applicable to the requested modification.

100.60 Public Notice Requirements.

A. Small Swine Facilities (500,000 pounds or less of normal production live weight).

1. For persons seeking to construct a new small swine facility, the Department shall have the applicant notify all adjoining property owners and people residing on property within 1/4 mile (1320 feet) of the proposed location of the facility (footprint of construction) of the applicants intent to build a swine facility. The applicant shall use a notice of intent form provided by the Department. The Department shall also post up to four notices on the perimeter of the property or in close proximity to the property, in visible locations as determined by the Department. The notice of intent shall advise adjoining property owners that they can send comments on the proposed animal facility directly to the Department.

2. For existing small swine facilities seeking to expand their current operations, the Department shall post up to four notices of intent to expand a swine facility on the perimeter of the property or in close proximity to the property, in visible locations as determined by the Department.

3. For small swine facilities, the Department shall review all comments received. If the Department receives twenty (20) or more letters from different people requesting a meeting or the Department determines significant comment exists, a meeting shall be held to discuss and seek resolution to the concerns prior to a permit decision being made. All persons who have submitted written comments shall be invited in writing to the meeting. First Class US mail service or hand delivery to the address of the interested party shall be used by the Department for the meeting invitation. However, if the Department determines that the number of persons who submitted written comments is significant, the Department shall publish a notice of the public meeting in a local newspaper of general circulation instead of notifying each individual by first class mail. In addition, the Department shall notify all group leaders and petition organizers in writing. Agreement of the parties is not required for the Department to make a permit decision.

B. Large Swine Facilities (greater than 500,000 pounds normal production live weight).

1. For persons seeking to construct a new large swine facility or expand an established large swine facility, the applicant shall:

a. Notify property owners within 1/4 mile (1320 feet) of the proposed location of the facility (footprint of construction) utilizing a form provided by the Department; and

b. Notify persons residing on adjoining property;

2. For persons seeking to construct a new large swine facility or expand an established large swine facility, the Department shall at the expense of the applicant:

a. Publish a notice of intent to construct or expand an established swine facility in a local newspaper of general circulation;

b. Notify the appropriate county commission;

c. Notify the appropriate water supply district (owners or operators of any potable surface water treatment plant located downstream from the proposed swine facility that could reasonably be expected to be adversely impacted if a significant problem arose); and

d. Notify any person who asked to be notified;

3. First Class US mail service or hand delivery to the address of a person to be notified shall be used by the Department for the notifications in Section 100.60.B.2.b-d. If the Department determines that members of the same group or organization have submitted comments or a petition, the Department shall only notify all groups, organization leaders, and petition organizers in writing. The Department shall ask these leaders and organizers to notify their groups or any concerned citizens who signed the petitions.

4. The notice shall contain instructions for public review and comment to the Department on the proposed construction and operation of the swine facility. The notice shall allow for a minimum thirty-day comment period.

5. When the Department receives twenty (20) or more letters from different people requesting a hearing or the Department determines there is significant public interest, the Department shall conduct a public hearing and shall provide notice of the public hearing in accordance with the notice requirements provided for in Section 100.60.B.2.a-d. The initial public notice and hearing notice can be combined into one notice. The Department shall provide at least thirty days (30) notice of the hearing.

C. Additional requirements for large swine facilities with 1,000,000 pounds or more normal production live weight.

1. For persons seeking to construct a new large swine facility or expand an established large swine facility with 1,000,000 pounds or more normal production live weight, the applicant shall notify all property owners and person(s) residing on property within one mile (5280 feet) of the proposed location of the large swine facility (footprint of construction) by certified mail. The notification must include the following information:

a. Name and address of the person proposing to construct a large swine facility;

b. The type of swine facility, the design capacity, and a description of the proposed swine manure management system;

c. The name and address of the preparer of the Animal Facility Management Plan;

d. The address of the local Natural Resources Conservation Service office; and

e. A statement informing the adjoining property owners and property owners within one mile of the proposed facility that they may submit written comments or questions to the Department.

2. The applicant shall conduct a minimum of one public meeting to present to the public the proposed project, its purpose, design, and environmental impacts. The applicant shall provide at least thirty days (30) notice of the meeting date and time by advertisement in a local newspaper of general circulation in the area of the proposed facility. The public meeting notice can be combined into one notice in combination with the notice run by the Department. However, the applicant must provide information concerning the date, time and location of the public meeting at the time of application. The minutes of the public meeting, proof of advertisement, and opinions derived from the meeting must be submitted to the Department.

3. The Department shall conduct a public hearing and shall provide notice of the public hearing in accordance with the notice requirements provided for in Section 100.60.C.2.a-d. The initial public notice and

30 FINAL REGULATIONS

hearing notice can be combined into one notice. The Department shall provide at least thirty days (30) notice of the hearing.

D. For properties that have multiple owners or properties that are in an estate with multiple heirs, the Department, at the expense of the applicant, shall publish a notice of intent to construct an animal facility in a local paper of general circulation in the area of the facility. This notice in the newspaper shall serve as notice to these multiple property owners of the producers intent to build a swine facility. The cost to run this notice is not included in the application fee, and therefore shall be billed directly to the permit applicant for payment. This notice fee shall be paid prior to the issuance of the permit.

E. When comments are received by electronic mail, the Department shall acknowledge receipt of the comment by electronic mail. These comments shall be handled in the same manner as written comments received by postal mail.

F. The Department shall consider all relevant comments received in determining a final permit decision.

G. The Department shall send notice of the permit decision to issue or deny the permit to the applicant, all persons who commented in writing to the Department, and all persons who attended the public hearing or meeting, if held. First Class US mail service or hand delivery to the address of a person to be notified shall be used by the Department for the decision notification. However, if the Department determines that members of the same group or organization have submitted comments or a petition, the Department shall only notify all group leaders and petition organizers in writing. The Department shall ask these leaders and organizers to notify members of their groups or any concerned citizens who signed the petitions.

H. For permit issuances, the Department shall publish a notice of issuance of a permit to construct or expand a swine facility in a local newspaper of general circulation in the area of the facility.

I. For permit denials, the Department shall give the permit applicant a written explanation which outlines the specific reasons for the permit denial.

J. For permit denials, the Department may publish a notice of decision in a local newspaper of general circulation in the area of the facility. If the number of concerned citizens who submitted written comments is small, the department may send each concerned citizen a letter by first class mail in lieu of the newspaper notice.

K. The Department shall include, at a minimum, the following information in the public notices: the name and location of the facility, a description of the operation and the method of manure and other swine by-products handling, instructions on how to appeal the Department's decision, the time frame for filing an appeal, the date of the decision, and the date upon which the permit becomes effective.

100.70 Permit Decision Making Process

A. No permit shall be issued before the Department receives a complete application package.

B. The agricultural program of the Department is not involved in local zoning and land use planning. Local government(s) may have more stringent requirements for agricultural animal facilities. The permittee is responsible for contacting the appropriate local government(s) to ensure that the proposed facility meets all the local requirements.

C. After the Department has received a complete application package, a technical review shall be conducted by the Department. The Department may request any additional information or clarification from the applicant or the preparer of the Animal Facility Management Plan to help with the determination on whether a permit should be issued or denied. If a permit application package meets all applicable requirements of this part, a permit may be issued.

D. A site inspection shall be made by the Department before a permit decision is made.

E. The Department shall consider the cumulative impacts including, but not limited to; impacts from evaporation; storm water; and other potential and actual point and nonpoint sources of pollution runoff; levels of nutrients or other elements in the soils and nearby waterways; groundwater or aquifer contamination; pathogens or other elements; and the pollution assimilative capacity of the receiving waterbody. These cumulative impacts will be considered prior to permitting new or expanded swine facilities. Alternative manure and other swine by-products treatment and utilization methods may be required in watersheds which are nutrient-sensitive waters, or impaired by pathogens.

F. The Department shall act on all permits to prevent, so far as reasonably possible considering relevant standards under state and federal laws, an increase in pollution of the waters and air of the State from any new or enlarged sources.

G. The Department also shall act on all permits so as to prevent degradation of water quality due to the cumulative and secondary effects of permit decisions. Cumulative and secondary effects are impacts attributable to the collective effects of a number of swine facilities in a defined area and include the effects of additional projects similar to the requested permit proposed on sites in the vicinity. All permit decisions shall ensure that the swine facility and manure treatment and utilization alternative with the least adverse impact on the environment be utilized. To accomplish this, new and expanding facilities, except large swine facilities with 1,000,000 pounds or more normal production live weight, shall use the best available technology economically achievable for the handling, storage, processing, treatment, and utilization of manure. New and expanding large swine facilities with 1,000,000 pounds or more normal production live weight shall use the best available technology for the handling, storage, processing, treatment, and utilization of manure. Cumulative and secondary effects shall include, but are not limited to; runoff from land application of swine manure and a swine facility; evaporation and atmospheric deposition of elements; ground-water or aquifer contamination; the buildup of elements in the soil; and other potential and actual point and nonpoint sources of pollution in the vicinity.

H. Setback limits given in this part are minimum siting requirements (with exception to those that are not labeled as minimum requirements, which are absolutes). On a case-by-case basis the Department may require additional separation distances applicable to swine facilities. The Department shall evaluate the proposed site including, but not limited to, the following factors when determining if additional distances are necessary:

1. Proximity to 100-year floodplain;
2. Geography and soil types on the site;
3. Location in a watershed;
4. Classification or impairment of adjacent waters;
5. Proximity to a State Designated Focus Area; Outstanding Resource Water; Heritage Corridor; Historic Preservation District; State Approved Source Water Protection Area; state or national park or forest; state or federal research area; and privately-owned wildlife refuge, park, or trust property;
6. Proximity to other known point source discharges and potential nonpoint sources;
7. Slope of the land;
8. Swine manure application method and aerosols;
9. Runoff prevention;

32 FINAL REGULATIONS

10. Adjacent groundwater usage;
11. Down-wind receptors; and
12. Aquifer vulnerability.

I. The appeal of a permit decision is governed by the SC Administrative Procedures Act, Regulation 61-72, and the Rules of the State's Administrative Law Judge Division.

J. When a permit is issued it shall contain an issue date, an effective date, and when applicable a construction expiration date. The effective date shall be at least twenty (20) days after the issue date to allow for any appeals. If a timely appeal is not received, the permit shall be effective on the effective date.

K. The swine facility, lagoon, treatment system, or manure storage pond can be built only when the permit is effective with no appeals pending. The facility cannot be placed into operation until the Department grants written authorization to begin operations.

L. To receive authorization to begin operations, the producer shall have the preparer of the Animal Facility Management Plan submit in writing to the Department the following information:

1. Certification that the construction of the structural components (such as the lagoon, treatment system and manure storage pond) has been completed in accordance with the approved Animal Facility Management Plan and the requirements of this regulation;
2. Certification that no portion of the facility has been construction in the 100-year floodplain;
3. Certification for containment of structural failures, if applicable; and
4. Certification for lagoon or manure storage pond lining, if applicable.

M. The Department shall conduct a final inspection before granting authorization to a producer to begin operations.

N. The Department shall grant written authorization for the producer to begin operations after it has received the information in 100.70.L and the results of a final inspection are satisfactory.

O. Swine Facility Permit Construction Expiration and Extensions.

1. Construction permits issued by the Department for agricultural animal facilities shall be given two years from the effective date of the permit to start construction and three years from the effective date of the permit to complete construction.

2. If the proposed construction as outlined in the permit is not started prior to the construction start expiration date, the construction permit is invalid unless an extension in accordance with this regulation is granted.

3. If construction is not completed and the facility is not placed into operation prior to the construction completion expiration date, the permit is invalid unless an extension in accordance with this regulation is granted.

4. If only a portion of permitted facility (animal growing houses and associated manure treatment and/or storage structures are completely constructed, but not all houses originally permitted were constructed) is completed prior to the construction completion expiration date, the construction for the remainder of the permit may be utilized within the permit life. The permittee shall obtain Departmental approval prior to utilizing the

permit in this manner. The Department may require that the permittee submit additional information or update the Animal Facility Management Plan prior to approval.

5. Extensions of the construction permit start and completion dates may be granted by the Department. The permittee shall submit a written request explaining the delay and detailing any changes to the proposed construction. This request shall be received not later than 60 days prior to the date that the permittee proposes to extend. The maximum extension period shall not exceed one year.

P. Permits issued under this regulation for all swine facilities shall be renewed at least every seven years. However, if a facility is classified as a CAFO under the NPDES Regulations in R.61-9, the expiration date shall be no more than five years after the issue date.

Q. An expired permit (final expiration date for renewal) issued under this part continues in effect until a new permit is effective if the permittee submits a complete application, to the satisfaction of the Department, at least 180 days before the existing permit expires. The Department may grant permission to submit an application later than the deadline for submission stated above, but no later than the permit expiration date. If the facility has been closed for any two consecutive years since the last permit was issued, the provision for the expiring permit remaining in effect does not apply since the permit is no longer valid. Permittees shall notify the Department in writing within 30 days of when they go out of business.

R. Permit renewal applications shall meet all the requirements of this regulation as the Department determines appropriate. The Department shall review the site and make a determination on a case-by-case basis on which requirements are applicable.

S. No permit will be issued to an applicant who contracts with an integrator or integrating company unless the permit is in accordance with the approved cumulative environmental and public health impact assessment plan as required in part 500.20 (Integrator Submittal Requirements) of this regulation.

100.80 Swine Facility, Lagoon, Treatment System, and Manure Storage Pond Siting Requirements.

A. Siting Requirements applicable to all small (500,000 pounds or less of normal production live weight) swine facilities, lagoons, treatment systems, and manure storage ponds.

1. The minimum separation distance between a swine facility (not including a lagoon, treatment system, manure storage pond, or manure utilization areas) and a potable water well (excluding the applicant's well) is 200 feet. The minimum separation distance between a swine facility (not including a lagoon, treatment system, manure storage pond, or manure utilization areas) and a potable water well owned by the applicant is 50 feet (as required by R.61-71).

2. The minimum separation distance between a lagoon, treatment system, or a manure storage pond and a public or private human drinking water well (excluding the applicant's well) is 500 feet. The minimum separation distance between a lagoon, treatment system, or manure storage pond and a potable water well owned by the applicant is 100 feet.

3. Except for site drainage, the minimum separation distance required between a ditch or swale, which drains directly into waters of the State (excluding ephemeral and intermittent streams) and a swine facility, swine lagoon, treatment system, or manure storage pond is 100 feet. The setback from ditches may be reduced by the Department, if a permanent vegetative water quality buffer, that meets NRCS standards at a minimum, is installed and maintained.

4. Except for site drainage, the minimum separation distance required between a ditch or swale, which drains directly into an ephemeral or intermittent stream, and a swine facility, swine lagoon, treatment system, or

34 FINAL REGULATIONS

manure storage pond is 50 feet. The setback from ditches may be reduced by the Department, if a permanent vegetative water quality buffer, that meets NRCS standards at a minimum, is installed and maintained.

5. The minimum separation distance required between a swine facility, lagoon, treatment system, or manure storage pond and ephemeral or intermittent streams is 100 feet. The setback from ephemeral or intermittent streams may be reduced by the Department, if a permanent vegetative water quality buffer, that meets NRCS standards at a minimum, is installed and maintained.

6. The minimum separation distance required between a small swine facility (not including the lagoon, treatment system, or manure storage pond) and waters of the State (excluding ephemeral and intermittent streams) is 100 feet.

7. The minimum separation distance required between a small swine lagoon, treatment system, or manure storage pond and waters of the State (excluding ephemeral and intermittent streams) is 500 feet.

8. If the waters of the State (not including ephemeral and intermittent streams) are designated Outstanding Resource Waters, Critical Habitat Waters of federally endangered species, or Shellfish Harvesting Waters, the minimum separation distance required between a small swine lagoon, treatment system, or a manure storage pond and waters of the State (not including ephemeral and intermittent streams) is 1,320 feet (1/4 mile).

9. The distance required between a small swine lagoon, treatment system, or manure storage pond and waters of the State (not including ephemeral and intermittent streams) can be reduced to 200 feet if the permittee implements a design to control the discharge from a failed lagoon, treatment system or manure storage pond so that it never enters waters of the State (not including ephemeral and intermittent streams) and the designer, either a NRCS employee or a registered engineer, certifies that the system has been constructed as specified. The distance shall not be reduced if the waters of the state are designated Outstanding Resource Waters, Critical Habitat Waters of federally endangered species, or Shellfish Harvesting Waters.

10. For small facilities with a capacity of 250,000 pounds or less of normal production animal live weight at any one time, the separation distance required between a swine growing area (pens or barns not including range areas) and the distance to lot line of real property owned by another person is 200 feet or 1000 feet from the nearest residence, whichever is greater.

11. For small swine facilities with a capacity of more than 250,000 pounds and less than 500,001 pounds of normal production animal live weight at any one time, the separation distance required between a swine growing area (pens or barns not including range areas) and the lot line of real property owned by another person is 400 feet or 1000 feet from the nearest residence, whichever is greater.

12. For small facilities with a capacity of 250,000 pounds or less of normal production animal live weight at any one time, the separation distance required between a lagoon, treatment system, and/or manure storage pond and the lot line of real property owned by another person is 300 feet or 1000 feet from the nearest residence, whichever is greater.

13. For small swine facilities with a capacity of more than 250,000 pounds and less than 500,001 pounds of normal production animal live weight at any one time, the separation distance required between a lagoon, treatment system, or manure storage pond and the lot line of real property owned by another person is 600 feet or 1000 feet from the nearest residence, whichever is greater.

14. The distances in items 10-13 above can be reduced by written consent of the adjoining property owner, unless a swine facility is located on the adjacent property or within 1000 feet of the property line. Written consent is not needed when the Department reduces the distances under the requirements of Part 300.

B. Siting Requirements applicable to all large swine facilities, with less than 1,000,000 pounds normal production live weight, and the lagoons, treatment systems, and manure storage ponds associated with the facility.

1. The minimum separation distance between a large swine facility with less than 1,000,000 pounds normal production live weight (not including a lagoon, treatment system, manure storage pond, or manure utilization areas) and a potable water well (excluding the applicant's well) is 200 feet. The minimum separation distance between a swine facility (not including a lagoon, treatment system, manure storage pond, or manure utilization areas) and a potable water well owned by the applicant is 50 feet (as required by R.61-71).

2. The minimum separation distance between a lagoon, treatment system, or a manure storage pond, with less than 1,000,000 pounds normal production live weight, and a public or private human drinking water well (excluding the applicant's well) is 500 feet. The minimum separation distance between a lagoon, treatment system, or manure storage pond and a potable water well owned by the applicant is 100 feet.

3. Except for site drainage, the minimum separation distance required between a ditch or swale, which drains directly into waters of the State (excluding ephemeral and intermittent streams) and a swine facility, swine lagoon, treatment system, or manure storage pond, with less than 1,000,000 pounds normal production live weight, is 100 feet. The setback from ditches may be reduced by the Department, if a permanent vegetative water quality buffer at least 50 feet wide, that meets NRCS standards at a minimum, is installed and maintained.

4. Except for site drainage, the minimum separation distance required between a ditch or swale, which drains directly into an ephemeral or intermittent stream, and a swine facility, swine lagoon, treatment system, or manure storage pond, with less than 1,000,000 pounds normal production live weight, is 50 feet.

5. The minimum separation distance required between a large swine facility, lagoon, treatment system, or manure storage pond, with less than 1,000,000 pounds normal production live weight, and ephemeral or intermittent is 100 feet. The setback from ephemeral or intermittent streams may be reduced by the Department, if a permanent vegetative water quality buffer at least 50 feet wide, that meets NRCS standards at a minimum, is installed and maintained.

6. The minimum separation distance required between a large swine facility with less than 1,000,000 pounds normal production live weight (not including the lagoon, treatment system, or manure storage pond) and waters of the State (excluding ephemeral and intermittent streams) is 200 feet.

7. The minimum separation distance required between a large swine lagoon, treatment system, or manure storage pond, with less than 1,000,000 pounds normal production live weight, and waters of the State (not including ephemeral and intermittent streams) is 1,320 feet (1/4 mile). If the waters of the State (not including ephemeral and intermittent streams) are designated Outstanding Resource Waters, Critical Habitat Waters of federally endangered species, or Shellfish Harvesting Waters, the minimum separation distance required between a lagoon, treatment system, or manure storage pond and waters of the State (not including ephemeral and intermittent streams) is 2,640 feet (1/2 mile). A minimum 100-foot wide vegetative water quality buffer of plants and trees is required to be installed and maintained on the site between the facility and any down slope waters of the State. Sites with existing vegetation may qualify to utilize the existing vegetation for a buffer, if the vegetation is deemed sufficient. For new facilities constructed in areas where natural vegetation is not present, the Department shall evaluate these sites on a case-by-case basis to determine the amount of vegetative buffer that shall be planted. However, each site shall be required at a minimum to provide a vegetative buffer that meets the current NRCS standards.

8. The distance required between a large swine lagoon, treatment system, or manure storage pond, with less than 1,000,000 pounds normal production live weight, and waters of the State (not including ephemeral and intermittent streams) can be reduced to 500 feet if the permittee implements a design to control the discharge from

36 FINAL REGULATIONS

a failed lagoon, treatment system, or manure storage pond so that it never enters waters of the State (not including ephemeral and intermittent streams) and the designer, either a NRCS employee or a professional engineer, certifies that the plan has been implemented as specified. The distance shall not be reduced if the waters of the state are designated Outstanding Resource Waters, Critical Habitat Waters of federally endangered species, or Shellfish Harvesting Waters.

9. The minimum separation distance required between a large swine facility with less than 1,000,000 pounds normal production live weight (growing area, pens or barns not including range areas) and real property owned by another person is 1,000 feet.

10. For swine facilities with a capacity of 500,001 to 750,000 pounds of normal production animal live weight at any one time, the minimum separation distance required between a lagoon, treatment system, or manure storage pond and real property owned by another person is 1,000 feet.

11. For swine facilities with a capacity of 750,001 to 1,000,000 pounds of normal production animal live weight at any one time, the minimum separation distance required between a lagoon and/or a waste storage pond and real property owned by another person is 1,250 feet.

12. The minimum separation distance required between large swine facilities with less than 1,000,000 pounds normal production live weight is two miles.

13. A separation distance to adjacent land as provided in 9-11 above does not apply to a swine facility, lagoon, treatment system, or manure storage pond which is constructed or expanded, if the titleholder of adjoining land to the concentrated swine operation executes a written waiver with the title holder of the land where the swine facility is established or proposed to be located, under terms and conditions that the parties negotiate. The written waiver becomes effective only upon the recording of the waiver in the office of the Register of Deeds of the county in which the benefited land is located. The filed waiver precludes enforcement of 100.80.B.9-11 as it relates to the swine facility and to real property owned by another person. The permittee shall submit a copy of the document with the recording stamp to the Department. The separation distances shall not be reduced or waived if a swine facility is located on the adjacent property or within 1000 feet of the property line.

C. Siting requirements applicable to large swine facilities, with 1,000,000 pounds or more normal production live weight, and the lagoons, treatment systems, and manure storage ponds associated with the facility are as follows:

1. The minimum separation distance required between a large swine facility with 1,000,000 pounds or more normal production live weight and waters of the State (excluding ephemeral and intermittent streams) is 2,640 feet (½ mile).

2. The minimum separation distance required between a large swine lagoon, treatment system, or manure storage pond, with 1,000,000 pounds or more normal production live weight, and waters of the State (not including ephemeral and intermittent streams) is 2,640 feet (½ mile). If the waters of the State (not including ephemeral and intermittent streams) are designated Outstanding Resource Waters, Critical Habitat Waters of federally endangered species, or Shellfish Harvesting Waters, the minimum separation distance required between a lagoon, treatment system, or manure storage pond and waters of the State (not including ephemeral and intermittent streams) is 3,960 feet (¾ mile). A minimum 100-foot wide vegetative water quality buffer of plants and trees is required to be installed and maintained on the site between the facility and any down slope waters of the State. Sites with existing vegetation may qualify to utilize the existing vegetation for a buffer, if the vegetation is deemed sufficient. For new facilities constructed in areas where natural vegetation is not present, the Department shall evaluate these sites on a case-by-case basis to determine the amount of vegetative buffer that shall be planted. However, each site shall be required at a minimum to provide a vegetative buffer that meets the current NRCS standards.

3. The minimum separation distance required between a large swine facility with 1,000,000 pounds or more normal production live weight (including the lagoon, treatment system, and manure storage pond) and real property owned by another person or a residence (excluding the applicant's residence) is 1,750 feet.

4. The minimum separation distance between a swine facility with 1,000,000 pounds or more normal production live weight (including a lagoon, treatment system, or manure storage pond) and a potable water well (excluding the applicant's well) is 1,750 feet.

5. The minimum separation distance required between swine facilities with 1,000,000 pounds or more normal production live weight is twenty-five miles.

D. A new swine facility or an expansion of an established swine facility may not be located in the 100-year floodplain.

E. Water (a pond) that is completely surrounded by land owned by the permit applicant and has no connection to other water is excluded from the setback requirements outlined in this part.

F. All lagoon and manure storage pond setbacks contained in this part shall be measured from the outside toe of the dike.

G. Setback limits given in this part are minimum siting requirements, except those not labeled as minimum requirements, which are absolutes. On a case-by-case basis the Department may require additional separation distances to the minimum setbacks applicable to swine facilities. See Section 100.70.H. for specific criteria evaluated for determining if greater setbacks should be required.

100.90 General Requirements for Swine Manure Lagoons, Treatment Systems and Swine Manure Storage Ponds.

A. The lagoon, treatment system, or manure storage pond shall be designed by a professional engineer or a NRCS engineer and the construction shall be certified by the design engineer. It is a violation of these regulations and the Pollution Control Act for the owner or operator of the facility to make modifications or physical changes to the lagoon, treatment system, or manure storage pond without the prior approval of the Department and supervision of NRCS or a professional engineer. Plans and specifications for lagoon, treatment system, or manure storage pond modifications shall be designed and certified by NRCS or a professional engineer and submitted to the Department for approval prior to the modification.

B. Swine manure lagoons and manure storage ponds shall be designed at a minimum to NRCS-CPS. The manure storage pond or lagoon shall be designed to provide a minimum storage for manure, wastewater, normal precipitation less evaporation, normal runoff, residual solids accumulation, capacity for the 25 year - 24 hour storm event (precipitation and associated runoff) and at least one and one half (1 ½) feet of freeboard. New large swine facilities with 1,000,000 pounds or more normal production live weight shall be designed to provide storage capacity for all the above mentioned items including the 50 year - 24 hour storm event (precipitation and associated runoff) and at least two (2) feet of freeboard.

C. All lagoons and storage ponds shall be provided with a liner, designed with an initial specific discharge rate of less than 0.0156 feet/day in order to protect groundwater quality. Lagoons and manure storage ponds at swine facilities shall be lined with either a natural liner or a geomembrane liner or a combination thereof. Lagoons and manure storage ponds at large swine facilities with 1,000,000 pounds or more normal production live weight or at facilities within delineated source water protection areas or vulnerable recharge areas, as determined by the Department, shall be lined with a geomembrane liner such that the vertical hydraulic conductivity does not exceed 5×10^{-7} cm/sec. Geomembrane liners, at a minimum, shall meet NRCS-CPS. When lagoons or manure storage ponds are lined using only soils with low permeability rates (e.g., clay), the Department shall require appropriate documentation to demonstrate that the computed soil permeability of the liner is sufficient to prevent seepage

38 FINAL REGULATIONS

greater than the initial specific discharge rate. Appropriate certification shall be provided by the preparer of the Animal Facility Management Plan that the NRCS-CPS for lining lagoons and/or manure storage ponds with soils have been met.

D. Lagoons and manure storage ponds at swine facilities shall not exceed one million cubic feet of total volume, unless the lagoon or manure storage pond implements a design to control the discharge from a failed lagoon, treatment system, or manure storage pond so that it never enters waters of the State.

E. Large swine facilities with less than 1,000,000 pounds normal production live weight are prohibited from utilizing open anaerobic lagoons or manure storage ponds. These facilities shall utilize best available technology that is economically achievable for the manure handling, treatment, storage, and utilization.

F. Large swine facilities with 1,000,000 pounds or more normal production live weight are prohibited from utilizing open lagoons or manure storage ponds. These facilities shall utilize best available technology for the manure handling, treatment, storage, and utilization. Lagoons and manure storage ponds utilized at large swine facilities with 1,000,000 pounds or more normal production live weight shall be designed with airtight covers. Air pollution control devices utilizing the Best Available Technology shall be installed on all lagoon cover vents and openings to remove ammonia, hydrogen sulfide, methane, formaldehyde, and any other organic and inorganic air pollutants, which may be required by the Department. Such air pollution control devices shall meet all the requirements of the Department and appropriate air quality permits shall be obtained. "Best Available Technology" means, for the air emissions purpose of this regulation, the rate of emissions which reflects the most stringent emissions limitations required by any State regulation or permit, existing at the time the application is made, for all pollutants emitted from this source category; or, the most stringent emissions limit achieved in actual practice, whichever is more stringent.

G. If seepage results in either an adverse impact to groundwater or a significant adverse trend in groundwater quality occurs, as determined by the Department, the lagoon or manure storage pond shall be repaired at the owner's or operator's expense. Assessment and/or additional monitoring (more wells, additional constituents, and/or increased sampling frequency) may be required by the Department to determine the extent of the seepage. The repairs and/or assessment shall be completed in accordance with an implementation schedule approved by the Department. The Department may require groundwater corrective action.

H. Manure and other swine by-products shall not be placed directly in or allowed to come into contact with groundwater and/or surface water. The minimum separation distance between the lowest point of the lagoon and/or manure storage pond and the seasonal high water table beneath the lagoon and/or manure storage pond is 2 feet. If a geomembrane liner is installed, then the minimum separation distance is 1 foot from the seasonal high water table. Designs that include controlled drainage for water table adjustment shall be evaluated by the Department on a case-by-case basis, and may include additional monitoring and groundwater control requirements. If a design is proposed for water table adjustment, the design shall not impact wetlands. Groundwater monitoring wells may be required to be installed and monitored at a frequency as given in the permit for the facility in situations where a liner is used to allow the lowest point of a lagoon to be less than 2 feet to the seasonal high water table.

I. Owners of lagoons and manure storage ponds at large swine facilities (greater than 500,000 pounds normal production live weight) are required to install at least one up-gradient and two down-gradient monitoring wells at a depth which the Department considers appropriate around the lagoon or series of lagoons in order to monitor groundwater quality. For small swine facilities (500,000 pounds or less of normal production live weight), the Department may require monitoring wells upon Department review of the submittal package.

J. A groundwater monitoring plan shall be submitted with the permit application to the Department. All applicable State certification requirements regarding well installation, laboratory analyses, and report preparation shall be met. Groundwater monitoring wells shall be sampled at least once annually by qualified personnel, at the expense of the permittee. Monitoring wells at large swine facilities with 1,000,000 pounds or more normal

production live weight must be sampled at least quarterly, unless more frequent sampling is specified in the permit. The results shall be submitted to the Department in accordance with the specified permit requirements. Groundwater monitoring results shall be maintained by the producer for eight years. The Department may conduct routine and random visits to the swine facility to sample the monitoring wells.

K. The monitoring wells shall be properly installed and sampled prior to use of the lagoon or manure storage pond. All monitoring wells shall be sampled in accordance with the parameters identified in the permit such that a background concentration level can be established.

L. Before the construction of a lagoon and/or a manure storage pond, the owner or operator shall remove all under-drains that exist from previous agricultural operations that are under the lagoon and/or within twenty-five (25) feet of the outside toe of the proposed lagoon or manure storage pond dike. This requirement does not include under-drains that are approved as a part of a design that includes controlled drainage for water table adjustment.

M. Lagoons and manure storage ponds at large swine facilities with 1,000,000 pounds or more normal production live weight shall install automated lagoon level monitoring devices

N. Proper water levels in lagoons and manure storage ponds, as per plans and specifications, shall be maintained at all times by the permittee. The Department may require specific lagoon or manure storage pond volume requirements in permits.

O. If a lagoon, treatment system, or manure storage pond, or both, breaches or fails in any way, the owner or operator of the swine facility shall immediately notify the Department, the appropriate local government officials, and the owners or operators of any potable surface water treatment plant located downstream from the swine facility that could reasonably be expected to be adversely impacted.

P. Lagoons, treatment systems, and manure storage ponds shall be completely enclosed with an acceptable fence, unless a fence waiver is obtained from the Department.

Q. Lagoons and manure storage ponds shall have at least four warning signs posted around the perimeter of the structure. These signs should read, "Warning - Deep and Polluted Water", and one should be posted on each side of the lagoon or manure storage pond.

R. Vegetation on the dikes and around the lagoon or manure storage pond should be kept below a maximum height of eighteen inches. Trees or deeply rooted plants shall be prevented from growing on the dikes or within 25 feet of the outside toe of the dikes of the lagoon or manure storage pond.

S. Livestock or other animals that could cause erosion or damage to the dikes of the lagoon or manure storage pond shall not be allowed to enter the lagoon or manure storage pond, or graze on the dike or within 25 feet of the outside toe of the dike.

T. The Department shall require existing facilities, regardless of size, with a history of manure handling, treatment, and disposal problems related to a lagoon, to phase out the existing lagoon and incorporate new technology.

100.100 Manure Utilization Area Requirements

A. Application Rates. The Department shall approve an Animal Facility Management Plan that establishes an application rate for each manure utilization area based on the agronomic application rate of the specific crop(s) being grown. Other factors considered are the manure and other swine by-products impact on the environment, animals, and people living in the vicinity. The application rate shall also be based on the limiting constituent (either a nutrient or other constituent as given in item 100.100.B). In developing annual constituent loading rates and cumulative constituent loading rates, the Department shall consider:

40 FINAL REGULATIONS

1. Soil type;
2. Type of vegetation growing in land-applied area;
3. Proximity to 100-year floodplain;
4. Location in watershed;
5. Nutrient sensitivity of receiving land and waters;
6. Soil nutrient testing in conjunction with soil productivity information;
7. Nutrient, copper, zinc, and constituent content of the manure and other swine by-products being applied;
8. Proximity to a State Designated Focus Area; Outstanding Resource Water; Heritage Corridor; Historic Preservation District; State Approved Source Water Protection Area; state or national park or forest; state or federal research area; and privately-owned wildlife refuge, park, or trust property;
9. Proximity to other point and nonpoint sources;
10. Slope of land;
11. Distance to water table or groundwater aquifer;
12. Timing of manure application to coincide with vegetative cover growth cycle;
13. Timing of harvest of vegetative cover;
14. Hydraulic loading limitations;
15. Soil assimilative capacity;
16. Type of vegetative cover and its nutrient uptake ability;
17. Method of land application; and
18. Aquifer vulnerability.

B. Constituent Limits for Land Application of Swine manure and other swine by-products.

1. Swine Manure and other swine by-products. The Department may establish constituent limits in permits on a case-by-case basis on swine manure and other swine by-products to be land applied. Swine manure and other swine by-products containing only the standard constituents at normal concentrations as given by commonly accepted reference sources, such as Clemson University, American Society of Agricultural Engineers, Midwest Planning Service Document, or NRCS, can be land applied at or below agronomic rates without any specific constituent limits in a permit. When the swine manure or other swine by-products analysis indicates there are levels of copper, or other constituents of concern, the Department shall establish constituent limits in permits for each constituent of concern to ensure the water quality standards of Regulation 61-68 are maintained. For these cases the producer shall comply with the following criteria:

a. Constituent Limits. If swine manure and other swine by-products subject to a constituent limit is applied to land, either:

i. the cumulative loading rate for each constituent shall not exceed the rates in Table 1 of Section 100.100; or

ii. the concentration of each constituent in the swine manure and other swine by-products shall not exceed the concentrations in Table 2 of Section 100.100.

b. Constituent concentrations and loading rates - swine manure.

i. Cumulative constituent loading rates.

TABLE 1 OF SECTION 100.100 - CUMULATIVE CONSTITUENT LOADING RATES

Cumulative Constituent Loading Rate

| Constituent | (kilograms per hectare) | (pounds per acre) |
|-------------|-------------------------|-------------------|
| Copper | 1500 | 1339 |
| Zinc | 2800 | 2499 |

ii. Constituent concentrations.

TABLE 2 OF SECTION 100.100 - CONSTITUENT CONCENTRATIONS

Monthly Average Concentrations

| Constituent | Dry weight basis (milligrams per kilogram) |
|-------------|--|
| Copper | 1500 |
| Zinc | 2800 |

iii. Annual constituent loading rates.

TABLE 3 OF SECTION 100.100 - ANNUAL CONSTITUENT LOADING RATES

Annual Constituent Loading Rate

Constituent (kilograms per hectare per 365 day period) (pounds per acre per 365 day period)

| | | |
|--------|-----|-----|
| Copper | 75 | 67 |
| Zinc | 140 | 125 |

c. Additional constituents limits may be required, from the application information or subsequent monitoring in a permit thereafter, but such needs shall be assessed on an individual project basis.

d. No producer shall apply swine manure and other swine by-products subject to the cumulative constituent loading rates in Table 1 of Section 100.100.B.1 to land if any of the rates in Table 1 of Section 100.100.B.1 have been reached unless the constituent is removed from the manure and other swine by-products.

e. No producer shall apply swine manure and other swine by-products to land during a 365-day period after the annual application rate in Table 3 of Section 100.100.B.1 has been reached.

f. If swine manure and other swine by-products subject to the cumulative constituent loading rates in Table 1 of Section 100.100.B.1 have not been applied to the site, then the cumulative rates apply.

g. If swine manure and other swine by-products subject to the cumulative constituent loading rates in Table 1 of Section 100.100.B.1 have been applied to the site and the cumulative amount of each constituent is known, the cumulative amount of each constituent applied to the site shall be used to determine the additional

42 FINAL REGULATIONS

amount of each constituent that can be applied to the site in accordance with Section 100.100.B.1.a.i (cumulative loading rate shall not exceed the cumulative constituent loading rate).

h. Manure application shall not exceed the agronomic rate of application for plant available nitrogen (PAN) for the intended crop(s) on an annual basis. For those years that fertilizer is land applied, manure in combination with the fertilizer shall not be used so as to exceed the agronomic rate of nutrient utilization of the intended crop(s).

2. Any producer who confines swine shall ensure that the applicable requirements in this part are met when the swine manure and other swine by-products are applied to the land.

3. Swine manure and other swine by-products shall not be applied to land that is saturated from recent precipitation, flooded, frozen, or snow-covered. Swine manure and other swine by-products shall not be applied during inclement weather or when a significant rain event is forecasted to occur within 48 hours, unless approved by the Department in an emergency situation.

4. Swine manure and other swine by-products shall not be placed directly in groundwater.

5. The land application equipment, when used once or more per year, shall be calibrated at least annually by the producer. A permit may require more frequent calibrations to ensure proper application rates. The two most recent calibration records should be retained by the producer and made available for Department review upon request. If the land application equipment has not been used in over a year, then the equipment shall be calibrated prior to use.

6. No producer shall apply swine manure and other swine by-products to the land except in accordance with the requirements in this part.

7. A producer who supplies swine manure and other swine by-products to another person for land application shall provide the person who will land apply the manure and other swine by-products with the concentration of plant available nitrogen and the concentration of all other constituents listed in the permit. The producer shall also supply the person who will land apply the manure with a copy of the crop management plan included in their Animal Facility Management Plan or a copy of the Land Application brochure approved by the Department which outlines the land application requirements and responsibility for proper management of animal manure.

8. Swine manure and other swine by-products shall not be applied to or discharged onto a land surface when the vertical separation between the ground surface and the water table is less than 1.5 feet at the time of application, unless approved by the Department on a case by case basis. For special cases, no land application can occur when the vertical separation from the ground surface to the water table is less than 1.5 feet at the time of application unless a situation is deemed an emergency with departmental concurrence.

9. Soil sampling shall be conducted for each field prior to manure application to determine the appropriate application rate. Each field should be sampled at least once per year. If manure application frequency shall be less than once per year, then at least one soil sample shall be taken prior to returning to that field for land application. All new manure utilization areas shall be evaluated using the NRCS-CPS to determine the suitability for application and the limiting nutrient (nitrogen or phosphorus). However, fields that are high in phosphorus may also be required to incorporate additional runoff control or soil conservation features as directed by the Department.

10. Soil sampling to a depth of eighteen inches shall be performed within 45 days after each application of swine manure, but no more than two times per year if the application frequency is more than twice per year. This sampling shall be performed for at least three years after the initial application on at least one representative manure utilization area for each crop grown to verify the estimated calculated swine manure application rates for

the utilization areas. The date of manure application and the date of sampling shall be carefully recorded. The sampling shall be conducted at depths of zero to six inches, six to twelve inches, and twelve to eighteen inches with nitrates and phosphorus being analyzed.

11. The results of the pre-application and post-application sampling shall be used by the producer to adjust as necessary, the amount of swine manure to be applied to a manure utilization area to meet the agronomic application rate for the crop(s) to be grown. These results shall be submitted to the Department at the time of application for permit renewal.

12. Additional soil sampling to greater depths may be required by the Department on a case-by-case basis to ensure there is no potential for groundwater contamination. The permit shall give the appropriate depth and frequency for all soil sampling.

13. The permittee shall obtain information needed to comply with the requirements in this part.

14. All persons who routinely accept manure from a producer, in quantities greater than twelve tons per recipient per year, shall be listed in the approved Animal Facility Management Plan. The Animal Facility Management Plan shall include the appropriate manure utilization area information for the sites routinely used by other persons. The producer shall inform the recipient of the responsibility to properly manage the land application of manure to prevent discharge of pollutants to waters of the State (including ephemeral and intermittent streams). The person accepting the manure may be required by the Department to have an Animal Facility Management Plan and a permit for their manure utilization areas.

15. All persons who accept manure from a producer, regardless of whether the land is included in the waste management plan, are responsible for land applying the manure in accordance with these requirements. The Department may require the person(s) land applying the manure to correct any problems that result from the application of manure.

16. Swine manure shall not be applied to cropland more than 30 days before planting or during dormant periods for perennial species, unless otherwise approved by the Department in an emergency situation.

17. When the Department receives nuisance complaints on a land application site, the Department may restrict land application of animal manure on this site completely or during certain time periods.

18. The Department may require manure, spread on cropland, to be disked in immediately.

19. Manure (solid or liquid) shall only be applied when weather and soil conditions are favorable and when prevailing winds are blowing away from nearby dwellings. Animal manure should not be applied to land when the soil is saturated, flooded, during rain events, or when a significant rain event is forecasted to occur within 48 hours, unless otherwise approved by the Department in an emergency situation.

20. Manure shall not be spread in the floodplain if there is danger of a major runoff event, unless the manure is incorporated during application or immediately after application.

21. If the manure is stockpiled more than three (3) days, the manure shall be stored on a concrete pad or other approved pad (such as plastic or clay lined) and covered with an acceptable cover to prevent odors, vector attraction, and runoff. The cover should be vented properly with screen wire to let the gases escape. The edges of the cover should be properly anchored.

22. Producers who contract to transfer the swine manure and other swine by-products produced at their facility to a manure broker shall modify their existing Animal Facility Management Plan if they discontinue using the designated broker or if the manure broker goes out of the manure brokering business.

44 FINAL REGULATIONS

C. Setbacks for manure utilization areas.

1. Siting Requirements applicable to all manure utilization areas associated with small swine facilities (500,000 pounds or less normal production live weight).

a. The minimum separation distance in feet required between a manure utilization area and a residence is 300 feet. If there are no residences within 300 feet of the manure utilization area, manure can be applied up to the property line. The 300-foot setback may be waived with the consent of the owner of the residence. If the application method is injection or immediate incorporation, manure may be applied up to the property line. The setbacks are imposed at the time of application. The Department may impose these setbacks on previously approved sites to address problems on a case-by-case basis.

b. The minimum separation distance in feet required between a manure utilization area and waters of the State (not including ephemeral and intermittent streams), ditches, and swales that drain directly into waters of the State (not including ephemeral and intermittent streams) is 100 feet.

c. The minimum separation distance in feet required between a manure utilization area and ephemeral and intermittent streams is 100 feet when spray application is the application method, 75 feet when incorporation is the application method, and 50 feet when injection is the application method. When incorporation is accomplished within twenty-four hours of the initial application, the distance can be reduced to 50 feet.

d. The minimum separation distance in feet required between a manure utilization area and ditches and swales, that drain directly into ephemeral and intermittent streams is 50 feet.

e. The minimum separation distance in feet required between a manure utilization area and a public and private drinking water well is 200 feet.

2. Siting Requirements applicable to all manure utilization areas associated with large swine facilities with less than 1,000,000 pounds normal production live weight.

a. The minimum separation distance in feet required between a manure utilization area and a residence is 300 feet. If there are no residences within 300 feet of the manure utilization area, manure can be applied up to the property line. The 300-foot setback may be waived with the consent of the owner of the residence. If the application method is injection or immediate incorporation, manure may be applied up to the property line. The setbacks are imposed at the time of application. The Department may impose these setbacks on previously approved sites to address problems on a case-by-case basis.

b. The minimum separation distance in feet required between a manure utilization area and waters of the State (not including ephemeral and intermittent streams), ditches, and swales that drain directly into waters of the State (not including ephemeral and intermittent streams) is 100 feet.

c. The minimum separation distance in feet required between a manure utilization area and ephemeral and intermittent streams is 100 feet when spray application is the application method, 75 feet when incorporation is the application method, and 50 feet when injection is the application method. When incorporation is accomplished within twenty-four hours of the initial application, the distance can be reduced to 50 feet.

d. The minimum separation distance in feet required between a manure utilization area and ditches and swales that drain directly into ephemeral and intermittent streams is 50 feet.

e. The minimum separation distance in feet required between a manure utilization area and a public and private drinking water well is 200 feet.

3. Siting Requirements applicable to all manure utilization areas associated with large swine facilities with 1,000,000 pounds or more normal production live weight.

a. The minimum separation distance in feet required between a manure utilization area and real property owned by another person is 200 feet from the property lines.

b. The minimum separation distance in feet required between a manure utilization area and an occupied residence is 750 feet (excluding the applicant's residence).

c. The minimum separation distance in feet required between a manure utilization area and waters of the State (not including ephemeral and intermittent streams), ditches, and swales is 150 feet.

d. The minimum separation distance in feet required between a manure utilization area and a public and private drinking water well is 200 feet.

e. The minimum separation distance in feet required between a manure utilization area and ephemeral and intermittent streams is 100 feet.

4. Water (pond) that is completely surrounded by land owned by the applicant and has no connection to surface water is excluded from the setback requirements outlined in this part.

5. The Department may establish in permits additional application buffer setbacks for property boundaries, roadways, residential developments, dwellings, water wells, drainage ways, and surface water (including ephemeral and intermittent streams) as deemed necessary to protect public health and the environment. Factors taken into consideration in the establishment of additional setbacks would be swine manure application method, adjacent land usage, public access, aerosols, runoff prevention, adjacent groundwater usage, and potential for vectors and odors.

D. The Department may establish additional permitting restrictions based upon soil and groundwater conditions to ensure protection of the groundwater and surface waters of the State (including ephemeral and intermittent streams). Criteria may include but is not limited to soil permeability, clay content, depth to bedrock, rock outcroppings and depth to the seasonal high groundwater table.

E. The Department may establish permit conditions to require that swine manure and other swine by-products application rates remain consistent with the lime and fertilizer requirements for the cover, feed, food, and fiber crops based on land grant universities (in the southeast) published lime and fertilizer recommendations (such as the Lime and Fertilizer Recommendations, Clemson Extension Services, Circular 476).

F. Groundwater Monitoring for Manure Utilization Areas.

1. For large swine facilities with 1,000,000 pounds or more normal production live weight, at least one up-gradient and two down-gradient groundwater monitoring wells shall be installed for each drainage basin intersected by the manure utilization areas. The location, design and construction specifications for the monitoring wells shall be submitted in the application package. The information shall be reviewed and approved by the Department prior to permit issuance. The permit will contain specific requirements for sampling the groundwater monitoring wells including the frequency and parameters for sampling.

2. For small swine facilities (500,000 pounds or less normal production live weight) and large swine facilities with less than 1,000,000 pounds normal production live weight, the Department may require groundwater monitoring at manure utilization areas as appropriate.

46 FINAL REGULATIONS

3. The Department may establish minimum requirements in permits for soil and/or groundwater monitoring for manure utilization areas. Factors taken into consideration in the establishment of soil and groundwater monitoring shall include depth to the seasonal high groundwater, operation flexibility, application frequency, type of swine manure and other swine by-products, size of manure utilization area, and loading rate.

a. The Department may establish pre-application and post-application site monitoring requirements in permits for limiting nutrients or limiting constituents as determined by the Department.

b. The Department may establish permit conditions, which require the permittee to reduce, modify, or eliminate the swine manure and other swine by-products applications based on the results of this monitoring data.

c. The Department may modify, revoke and reissue, or revoke a permit based on the monitoring data.

G. The Department may require periodic monitoring of any wet weather ditches or perennial streams which are in close proximity to any manure utilization areas.

100.110 Spray Application System Requirements.

A. Spray application of swine manure utilizing irrigation equipment. This includes all methods of surface spray application, including but not limited to, fixed gun application, traveling or mobile gun application, or center pivot application.

B. New large swine facilities with 1,000,000 pounds or more normal production live weight are prohibited from utilizing spray application systems for manure application. Manure must be incorporated into the manure utilization fields utilizing subsurface injection at a depth of not less than six inches.

C. Manure utilization area slopes shall not exceed 10 percent unless approved by the Department. The Department may require that slopes be less than 10% based on site conditions.

D. Swine manure distribution systems shall be designed so that the distribution pattern optimizes uniform application.

E. Hydraulic Application Rates.

1. Application rates shall normally be based on the agronomic rate for the crop to be grown at the manure utilization area. As determined by soil conditions, the hydraulic application rate may be reduced below the agronomic rate to ensure no surface ponding, runoff, or excessive nutrient migration to the groundwater occurs.

2. The hydraulic application rate may be limited based on constituent loading including any constituent required for monitoring under this regulation.

F. Swine manure and other swine by-products shall not be land applied or discharged onto a land surface when the vertical separation between the ground surface and the seasonal high water table is less than 1.5 feet at the time of application, unless approved by the Department on a case-by-case basis. For special cases, no land application can occur when the vertical separation from the ground surface to the water table is less than 1.5 feet at the time of application unless a situation is deemed an emergency with departmental concurrence.

G. Conservation measures, such as terracing, strip cropping, etc., may be required in specific areas determined by the Department as necessary to prevent potential surface runoff from entering or leaving the manure

utilization areas. The Department may consider alternate methods of runoff controls that may be proposed by the applicant, such as berms.

H. For swine facilities, a system for monitoring the quality of groundwater may also be required for the proposed manure utilization areas. The location of all the monitoring wells shall be approved by the Department. The number of wells, constituents to be monitored, and the frequency of monitoring shall be determined on a case-by-case basis based upon the site conditions such as type of soils, depth of water table, aquifer vulnerability, proximity to State Approved Source Water Protection Area, etc.

I. If an adverse trend in groundwater quality is identified, further assessment and/or corrective action may be required. This may include an alteration to the permitted application rate or a cessation of manure application in the impacted area.

J. Spray application systems shall be designed and operated in such a manner to prevent drift of liquid manure onto adjacent property.

100.120 Frequency of Monitoring for Swine Manure.

A. The producer shall be responsible for having representative samples of the swine manure collected and analyzed at least once per year and when the feed composition significantly changes. The constituents to be monitored shall be given in the permit. The analyses shall be used to determine the amount of swine manure to be land applied. In order to ensure that the permitted application rate (normally the agronomic rate) is met, the application amount shall be determined using a rolling average of the previous analyses. The Department shall establish minimum requirements for the proper method of sampling and analyzing of swine manure. Facilities with permits that do not specify which constituents to monitor shall monitor for Ammonium-Nitrogen, Total Kjeldahl Nitrogen (TKN), Organic Nitrogen (Organic Nitrogen = TKN - Ammonium Nitrogen), P_2O_5 , and K_2O .

B. The Department may require nitrogen, potassium, phosphorus, the constituents listed in Table 1 and Table 2 of Section 100.100 (Manure Utilization Area Requirements), and any other constituent contained in a permit to be monitored prior to each application.

C. Permittees do not have to analyze for any constituent they can demonstrate to the satisfaction of the Department is not present in their swine manure.

D. All monitoring shall be done in accordance with collection procedures in Standard Methods for Analysis of Water and Wastewater or other Department guidelines. Analysis shall be conducted by a laboratory certified by the Department. This laboratory shall have and maintain certification for the constituents to be analyzed.

100.130 Dead Swine Disposal Requirements.

A. Dead swine disposal shall be done as specified in the approved Animal Facility Management Plan. The Dead Swine Disposal Plan shall include the following:

1. Primary Method of disposal for the handling of dead swine that result from normal mortality on the farm.

2. Alternate Method for the handling of dead swine that result from excessive mortality on the farm. The normal method of disposal may not be sufficient to handle an excessive mortality situation. Each producer should have an emergency or alternate method to dispose of excessive mortality. Excessive mortality burial sites shall be approved by the Department prior to utilization.

B. Burial.

48 FINAL REGULATIONS

1. Burial pits may be utilized for emergency conditions, as determined by the Department, when the primary method of disposal is not sufficient to handle excessive mortality.

2. Burial pits shall not be located in the 100-year floodplain.

3. Soil type shall be evaluated for leaching potential.

4. Burial pits shall not be located or utilized on sites that are in areas that may adversely affect surface or groundwater quality or further impact impaired water bodies.

5. The bottom of the burial pit may not be within 2 feet of the seasonal high groundwater level.

6. No burial site shall be allowed to flood with surface water.

7. Swine placed in a burial site shall be covered daily with sufficient cover (6 inches per day minimum) to prohibit exhumation by feral animals.

8. When full, the burial site shall be properly capped (minimum 2 feet) and grassed to prohibit erosion.

9. Proposed burial pit sites shall be approved by the Department. The Department may conduct a geologic review of the proposed site prior to approval.

10. The Department may require any new or existing producers to utilize another method of dead swine disposal if burial is not managed according to the Dead Swine Disposal Plan or repeated violations of these burial requirements occur or adverse impact to surface or groundwater is determined to exist.

11. The Department may require groundwater monitoring for dead animal burial pits on a case-by-case basis. The Department shall consider all of the facts including, but not limited to, the following: depth to the seasonal high water table; aquifer vulnerability; proximity to a State Approved Source Water Protection Area; groundwater use in the area; distance to adjacent surface waters; number of dead animals buried; and frequency of burial in the area.

C. Incinerators.

1. For facilities proposing an incinerator for dead swine disposal, either a permit for the air emissions shall be obtained from the Department's Bureau of Air Quality before the incinerator can be built or the following criteria shall be met in order to qualify for an exemption from an air permit:

a. The emission of particulate matter shall be less than one pound per hour at the maximum rated capacity.

b. The incinerator shall be a package incinerator and have a rated capacity of 500 pounds per hour or smaller which burns virgin fuel only.

c. The incinerator shall not exceed an opacity limit of 10%.

2. Incinerators used for dead swine disposal shall be properly operated and maintained. Operation shall be as specified in the owner's manual provided with the incinerator. The owner's manual shall be kept on site and made available to Department personnel upon request.

3. The use of the incinerator to dispose of waste oil, hazardous waste, or any other waste chemical is prohibited. The use of the incinerator shall be limited to dead swine disposal only unless otherwise approved by the Department's Bureau of Air Quality.

D. Composters. Composters used for dead swine disposal shall be designed by a professional engineer or an NRCS representative and operated in accordance with the approved Animal Facility Management Plan.

E. Disposal of dead swine in a municipal solid waste landfill shall be in accordance with Regulation 61-107.258.

F. Disposal of swine carcasses or body parts into manure lagoons, treatment systems, storage ponds, waters of the State, ephemeral and intermittent streams, ditches, and swales is prohibited.

G. Other methods of dead swine disposal that are not addressed in this regulation may be proposed in the Dead Swine Disposal Plan.

100.140 Other Requirements.

A. There shall be no discharge of pollutants from the operation into surface waters of the State (including ephemeral and intermittent streams). There shall be no discharge of pollutants into groundwater, which could cause groundwater quality not to comply with the groundwater standards established in South Carolina Regulation 61-68.

B. On a case-by-case basis, the Department may impose additional or more stringent requirements for the management, handling, treatment, storage, or utilization of swine manure and other swine by-products.

C. The following cases shall be evaluated for additional or more stringent requirements:

1. Source water protection. Facilities and manure utilization areas located within a state approved source water protection area.

2. 303(d) Impaired Water bodies List. Facilities and manure utilization areas located upstream of an impaired waterbody.

3. Proximity to Outstanding Resource Waters, trout waters, shellfish waters, or potential to adversely affect a federally listed endangered or threatened species, its habitat, or a proposed or designated critical habitat.

4. Aquifer Vulnerability Area, an area where groundwater recharge may affect an aquifer.

D. If an adverse impact to the waters of the State, ephemeral and intermittent streams, or groundwater from swine manure and other swine by-products handling, storage, treatment, or utilization practices are documented, through monitoring levels exceeding the standards set forth in Regulation 61-68 or a significant adverse trend occurs, the Department may require the producer responsible for the swine manure and other swine by-products to conduct an investigation to determine the extent of impact. The Department may require the producer to remediate the water to within acceptable levels as set forth in Regulation 61-68.

E. No manure may be released from a swine manure lagoon, treatment system, or storage pond or the premises of a swine facility to waters of the State (including ephemeral and intermittent streams) unless the manure is treated to water quality standards and a permit pursuant to Section 402 or 404 of the CWA has been issued by the Department.

F. Swine medical waste cannot be disposed into swine lagoons, treatment systems or manure storage ponds or land applied with swine manure and other swine by-products.

G. In the event of a discharge from a swine lagoon, treatment system, or manure storage pond, the permittee is required to notify the Department immediately, within 24 hours of the discharge.

50 FINAL REGULATIONS

H. When the Department determines that a nuisance exists at a swine facility, the permittee shall take action to correct the nuisance to the degree and within the time frame designated by the Department.

I. Permittees shall maintain all-weather access roads to their facilities at all times.

J. The body of vehicles transporting manure shall be wholly enclosed and while in transit, be kept covered with a canvas cover provided with eyelets and rope tie-downs, or any other approved method which shall prevent blowing or spillage of loose material or liquids. Should any spillage occur during the transportation of the manure, the owner/operator shall take immediate steps to clean up the manure.

100.150 Odor Control Requirements.

A. The odor abatement plan for the swine facility, lagoon, treatment system, manure storage pond, and manure utilization areas shall consist of the following:

1. Operation and maintenance practices which are used to eliminate or minimize undesirable odor levels in the form of a Best Management Plan for Odor Control;
2. Use of treatment processes for the reduction of undesirable odor levels;
3. Additional setbacks from property lines beyond the minimum setbacks given in this part;
4. Other methods as may be appropriate; or
5. Any combination of these methods.

B. Producers shall utilize Best Management Practices normally associated with the proper operation and maintenance of a swine facility, lagoon, treatment system, manure storage pond, and any manure utilization area to ensure an undesirable level of odor does not exist.

C. No producer may cause, allow, or permit emission into the ambient air of any substance or combination of substances in quantities that an undesirable level of odor is determined to result unless preventive measures of the type set out below are taken to abate or control the emission to the satisfaction of the Department. When an odor problem comes to the attention of the Department through field surveillance or specific complaints, the Department shall determine if the odor is at an undesirable level by considering the character and degree of injury or interference to:

1. The health or welfare of the people;
2. Plant, animal, freshwater aquatic, or marine life;
3. Property; or
4. Enjoyment of life or use of affected property.

D. After determining an undesirable level of odor exists, the Department shall require remediation of the undesirable level of odor.

E. The Department may require abatement or control practices, including, but not limited to the following:

1. Removal or disposal of odorous materials;

2. Methods in handling and storage of odorous materials that minimize emissions;
 - a. Drying to a moisture content of 50% or less;
 - b. Solids Separation from liquid manure, and composting of solids;
 - c. Disinfection to kill microorganisms present in manure;
 - d. Aeration of manure;
 - e. Anaerobic digestion in a sealed vessel;
 - f. Composting of solid manure and other swine by-products;
 - g. Odor Control Additives.

3. Prescribed standards in the maintenance of premises to reduce odorous emissions;
 - a. Filtration (biofilters or other filter used to remove dust and odor) of ventilation air;
 - b. Keeping animals clean or separated from manure;
 - c. Adjust number of animals confined in the pens or paddocks in accordance with Clemson University Animal Space Guidelines.
 - d. Frequent removal of manure from animal houses;
 - e. Adding a layer of water in the shallow pits after the manure is removed;
 - f. Feeding areas should be kept dry, and waste feed accumulation should be minimized;
 - g. Maintaining feedlot surfaces in a dry condition (25%-40% moisture content), with effective dust control;
 - h. Proper maintenance of the dead swine disposal system;
 - i. Covering or reducing the surface area of manure and other swine by-products storage. (Vents shall be provided for release of pressure created by manure gases if completely sealed covers are used);
 - j. Planting trees around or downwind of the manure and other swine by-products storage and treatment facilities;
 - k. Incorporation of manure and other swine by-products immediately after land application;
 - l. Selection of appropriate times for land application.

4. Best Available Technology to reduce odorous emissions.

F. Nothing in this section prohibits an individual or group of persons from bringing a complaint against a swine facility including problems at lagoons, treatment systems, manure storage ponds, and manure utilization areas.

52 FINAL REGULATIONS

G. If the permittee fails to control or abate the odor problems at a land application site to the satisfaction and within a time frame determined by the Department, approval for land application of manure on the manure utilization area in question may be revoked. Additional land may be required to be added to the Animal Facility Management Plan, if necessary to provide a sufficient amount of land for manure utilization.

100.160 Vector Control Requirements

A. Vector Abatement Plan. The Vector Abatement Plan shall at a minimum consist of the following:

1. Normal management practices used at the swine facility, lagoon, treatment system, manure storage pond, and manure utilization areas to ensure there is no accumulation of organic or inorganic materials to the extent and in such a manner as to create a harborage for rodents or other vectors that may be dangerous to public health.

2. A list of specific actions to be taken by the producer if vectors are identified as a problem at the swine facility, lagoon, treatment system, manure storage pond, or any manure utilization area. These actions should be listed for each vector problem, e.g., actions to be taken for fly problems, actions to be taken for rodent problems, etc.

B. No producer may cause, allow, or permit vectors to breed or accumulate in quantities that result in a nuisance level, as determined by the Department.

C. The Department shall require remediation of the problem to the satisfaction of the Department, after determining a vector problem exists.

D. The Department may require abatement or control practices, including, but not limited to the following:

1. Remove and properly dispose of vector infested materials;

2. Methods in handling and storage of materials that minimize vector attraction;

a. Remove spilled or spoiled feed from the house as soon as practicably possible not to exceed 48 hours, unless otherwise approved by the Department;

b. Remove and properly dispose of dead animals as soon as practicably possible not to exceed 24 hours, unless otherwise approved by the Department;

c. Increase the frequency of manure removal from animal houses;

d. Prevent solids buildup in the pit storage or on the floors or walkways;

e. Remove excess manure packs along walls and curtains;

f. Compost solid manure and other swine by-products;

g. Appropriate use of vector control chemicals, poisons or insecticides (take caution to prevent insecticide resistance problems);

h. Utilize traps, or electrically charged devices;

i. Utilize biological agents;

- j. Utilize Integrated Pest Management; and
 - k. Incorporate manure and other swine by-products immediately after land application.
3. Prescribed standards in the maintenance of premises to reduce vector attraction;
- a. Remove standing water that may be a breeding area for vectors;
 - b. Keep animals clean or separated from manure;
 - c. Keep facility clean and free from trash or debris;
 - d. Properly utilize and service bait stations;
 - e. Keep feeding areas dry, and minimize waste feed accumulation;
 - f. Keep grass and weeds mowed around the facility and manure storage or treatment areas;
 - g. Maintain the dead swine disposal system;
 - h. Cover or reduce the surface area of manure and other swine by-products storage. (Vents shall be provided for release of pressure created by manure gases if completely sealed covers are used);
 - i. Store feed and feed supplements properly;
 - j. Conduct a weekly vector monitoring program;
 - k. Be aware of insecticide resistance problems, and rotate use of different insecticides;
 - l. Prevent and repair leaks in waterers, water troughs or cups; and
 - m. Ensure proper grading and drainage around the buildings to prevent rain water from entering the buildings or ponding around the buildings.
4. Best available control technology to reduce vector attraction and breeding.

100.170 Record Keeping.

A. A copy of the approved Animal Facility Management Plan, including approved updates, and a copy of the permit(s) issued to the producer shall be retained by the permittee for as long as the swine facility is in operation.

B. All application information submitted to the Department shall be retained by the permittee for eight years. However, if the facility was permitted prior to June 26, 1998, and the permittee has previously discarded these documents since there was no requirement to maintain records at that time, this requirement shall not apply.

C. Records shall be developed for each manure utilization area. These records shall be kept for eight years. The records shall include the following:

- 1. For each time swine manure and other swine by-products are applied to the site, the amount of swine manure and other swine by-products applied (in gallons per acre or pounds per acre, as appropriate), the location of the site, and the date and time of manure and other swine by-products application;

54 FINAL REGULATIONS

2. All sampling results for swine manure that is land applied, if applicable;
3. All soil monitoring results, if applicable;
4. All groundwater monitoring results, if applicable; and
5. Crops grown.

D. Records for the facility to include the following:

1. Monthly animal count and the normal production live weight; and
2. Mortality count and method of disposal.

E. Records for lagoon, treatment system, or manure storage pond operations to include the following:

1. Monthly water levels of the lagoon, treatment system, and manure storage pond; and
2. Groundwater monitoring results, if applicable.

F. All records retained by the producer shall be kept at either the facility, an appropriate business office, or other location as approved by the Department.

G. All records retained by the producer shall be made available to the Department during normal business hours for review and copying, upon request by the Department.

100.180 Reporting.

A. All large swine operations (greater than 500,000 pounds of normal production live weight) shall submit, on a form approved by the Department, the following on an annual basis or more frequently if required by a permit or regulation:

1. All manure sampling results for the last year, if applicable, and the latest rolling average concentration for the land limiting constituent;
2. All soil monitoring results, if applicable;
3. All groundwater monitoring results, if applicable;
4. Calculated application rates for all manure utilization areas; and
5. The adjusted application rates, if applicable, based on the most recent swine manure sampling, soil samples, and crop yields. The application rate change could also be due to a change in field use, crop grown, or other factors.

B. The Department may require small swine facilities (500,000 pounds or less of normal production live weight) to submit annual reports on a case-by-case basis.

C. The Department may establish permit conditions to require a swine facility to complete and submit a comprehensive report every five years. The Department shall review this report to confirm that the permitted nutrient application rates have not been exceeded. Based on the results of the review, additional soil and/or groundwater monitoring requirements, permit modification, and/or corrective action may be required.

100.190 Training Requirements

A. An operator of a new or existing swine facility, lagoon, manure storage pond, or manure utilization area shall complete a training program on the operation of swine manure management created by Clemson University.

B. Operators of new and existing large swine facilities (greater than 500,000 pounds of normal production live weight) shall be required to pass a test and become certified as a part of the training program created by Clemson University. The Department may require operators with documented violations to pass a test through Clemson's program.

C. The training and/or certification shall be completed by operators of new facilities prior to start-up of operations.

D. The training and/or certification shall be completed by operators of existing facilities within two years of the effective date of this regulation.

E. Training and/or certification shall be maintained as long as the facility remains in operation.

F. Failure to obtain the training and certification as provided in this Section shall be deemed a violation of this Regulation.

G. Additional Training and Certification Requirements for Large Swine Facilities with 1,000,000 pounds or greater normal production live weight.

1. The Department shall classify all manure treatment systems serving large swine facilities, giving due regard to size, types of work, character, and volume of manure to be treated, and the use and nature of the land resources receiving the manure.

2. Manure treatment systems may be classified in a group higher than indicated at the discretion of the Department by reason of the following:

a. Incorporation in the treatment system of complex features which cause the treatment system to be more difficult to operate than usual; or

b. A waste stream that is unusually difficult to treat; or

c. Conditions of flow; or

d. Use of the receiving lands requiring an unusually high degree of system operation control; or

e. Combinations of such conditions or circumstances.

3. The classifications for biological treatment systems are based on the following groups:

a. Group I - B. All agricultural manure treatment systems which include one or more of the following units: primary settling, chlorination, sludge removal, imhoff tanks, sand filters, sludge drying beds, land spraying, grinding, screening, oxidation, and stabilization ponds.

b. Group II - B. All agricultural manure treatment systems which include one or more of the units listed in Group I-B and, in addition, one or more of the following units: sludge digestion, aerated lagoon, and sludge thickeners.

56 FINAL REGULATIONS

c. Group III - B. All agricultural manure treatment systems which include one or more of the units listed in Groups I-B and II-B and, in addition, one or more of the following: trickling filters, secondary settling, chemical treatment, vacuum filters, sludge elutriation, sludge incinerator, wet oxidation process, contact aeration, and activated sludge (either conventional, modified, or high rate processes).

d. Group IV - B. All agricultural manure treatment systems which include one or more of the units listed in Groups I-B, II-B, and III-B and, in addition, treat manure having a raw five-day biochemical oxygen demand of five thousand pounds a day or more.

4. The classifications for physical chemical manure treatment systems are based on the following groups:

a. Group I-P/C. All agricultural manure treatment systems which include one or more of the following units: primary settling, equalization, pH control, and oil skimming.

b. Group II-P/C. All agricultural manure treatment systems which include one or more of the units listed in Group I-P/C and, in addition, one or more of the following units: sludge storage, dissolved air flotation, and clarification.

c. Group III-P/C. All agricultural manure treatment systems which include one or more of the units listed in Groups I-P/C and II-P/C and, in addition, one or more of the following: oxidation/reduction reactions, cyanide destruction, metals precipitation, sludge dewatering, and air stripping.

d. Group IV-P/C. All agricultural manure treatment systems which include one or more of the units listed in Groups I-P/C, II-P/C and III-P/C and, in addition, one or more of the following: membrane technology, ion exchange, tertiary chemicals, and electrochemistry.

5. It shall be unlawful for any person or corporation to operate an agricultural manure treatment system at a large swine facility with 1,000,000 pounds or more normal production live weight unless the operator-in-charge holds a valid certificate of registration issued by the Board of Certification of Environmental Systems Operators in a grade corresponding to the classification of the agricultural manure treatment system supervised by him or her.

100.200 Violations.

A. Persons who violate this regulation or any permit issued under this regulation are subject to the penalties in Sections 48-1-320 (Criminal Penalties) and 48-1-330 (Civil Penalties) of the South Carolina Pollution Control Act.

B. Large swine facilities with 1,000,000 pounds or more normal production live weight shall be assessed automatic penalties (up to \$10,000 per day per violation) for the following violations:

1. Lagoon, treatment system or manure storage pond breach or loss of containment that is not the direct result of an Act of God.

2. Manure Utilization Area runoff due to improper manure application methods.

3. Discharge to groundwater on site causing groundwater to exceed any water quality standard established in Regulation 61-68.

C. Second occurrence of any of the violations outlined in 100.210 B. at a large swine facility with 1,000,000 pounds or more normal production live weight shall result in immediate revocation of the permit and the automatic assessment of appropriate penalties.

D. Immediate cessation of manure application will also be enforced on sites where groundwater quality is adversely affected.

E. Any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required by the Department to be maintained as a condition in a permit, or who alters or falsifies the results obtained by such devices or methods, shall be deemed to have violated a permit condition and shall be subject to the penalties provided for pursuant to 48-1-320 and 48-1-330 of the Code.

Part 200 - Animal Facilities (other than swine)

- 200.10 Purpose, Applicability, Inactive Facilities and Facilities Permitted Prior to the Effective Date of Regulation.
- 200.20 Permits and Compliance Period.
- 200.30 Exclusions.
- 200.40 Relationship To Other Regulations.
- 200.50 Permit Application Requirements (Animal Facility Management Plan Submission Requirements).
- 200.60 Public Notice Requirements.
- 200.70 Permit Decision Making Process.
- 200.80 Facility, Lagoon, Treatment System, and Manure Storage Pond Siting Requirements.
- 200.90 General Requirements for Animal Manure Lagoons, Treatment Systems, and Animal Manure Storage Ponds.
- 200.100 Manure Utilization Area Requirements.
- 200.110 Spray Application System Requirements.
- 200.120 Frequency of Monitoring for Animal Manure.
- 200.130 Dead Animal Disposal Requirements.
- 200.140 Other Requirements.
- 200.150 Odor Control Requirements.
- 200.160 Vector Control Requirements.
- 200.170 Record Keeping.
- 200.180 Reporting.
- 200.190 Training Requirements.
- 200.200 Violations.

200.10 Purpose, Applicability, Inactive Facilities and Facilities Permitted Prior to Effective Date of the Regulation.

A. Purpose.

1. To establish standards for the growing or confining of animals, processing of animal manure and other animal by-products, and land application of animal manure and other animal by-products in such a manner as to protect the environment, and the health and welfare of citizens of The State from pollutants generated by this process.

2. To establish standards, which consist of general requirements, constituent limits, management practices, and operational standards, for the utilization of animal manure and other animal by-products generated at animal facilities. Standards included in this part are for animal manure and other animal by-products applied to the land.

3. To establish standards for the frequency of monitoring and record keeping requirements for producers who operate animal facilities.

58 FINAL REGULATIONS

4. To establish standards for the proper operation and maintenance of animal facilities.

5. To establish criteria for animal facilities and manure utilization areas location as they relate to protection of the environment and public health. The location of animal facilities and manure utilization areas as they relate to zoning in an area is not covered in this regulation. Local county or municipal governments may have zoning requirements and these regulations neither interfere with nor restrict such zoning requirements. Permit applicants should contact local municipal and county authorities to determine any local requirements that may be applicable.

B. Applicability.

1. This part applies to:

- a. All new animal facilities;
- b. All expansions of existing animal facilities; and
- c. New manure utilization areas for existing animal facilities.

2. This part applies to all animal manure and other animal by-products applied to the land.

3. This part applies to all land where animal manure and other animal by-products are applied.

C. Inactive Facilities.

1. If an animal facility is closed for two (2) years or less, a producer may renew operations of the facility under the same conditions by which it was previously permitted by notifying the Department in writing that the facility is being operated again.

2. For animal facilities that have been closed for more than two years but less than five years, the Department shall review the existing permit and modify its operating conditions as necessary prior to the facility being placed back into operation.

3. For all animal facilities that have been closed for five or more years, the producer shall properly close out any lagoon, treatment system or manure storage pond associated with the facility. The closeout shall be accomplished in accordance with Regulation 61-82. The permittee shall submit a closeout plan that meets at a minimum NRCS-CPS within a time frame prescribed by the Department. Additional time may be granted by the Department to comply with the closeout requirement or to allow the producer to apply for a new permit under this regulation, as appropriate.

4. If an animal facility closes for more than five years, the requirements under this part shall be met before the facility can renew operations.

D. Facilities Permitted Prior to the Effective Date of the Regulation.

1. All existing animal facilities with permits issued by the Department before June 28, 1998 do not need to apply for a new permit as they are deemed permitted (deemed permitted animal facilities) unless they have been closed for more than two years or expand operations. These facilities shall meet the following sections of Part 200: Section 200.20 (Permits and Compliance Period), Section 200.90.A., D., and J.-O. (General Requirements for Animal Manure Lagoons, Treatment Systems, and Animal Manure Storage Ponds), Section 200.100.B.1.-22. (Manure Utilization Area Requirements), Section 200.110.H.-I. (Spray Application System Requirements), Section 200.120.A., C.-D. (Frequency of Monitoring for Animal Manure), Section 200.130.A., B., and C.2.-3. (Dead Animal Disposal Requirements), Section 200.140.A., C.-I. (Other Requirements), Section 200.150.B.-F.

(Odor Control Requirements), Section 200.160.B.-D. (Vector Control Requirements), Section 200.170 (Record Keeping), Section 200.180 (Reporting), Section 200.190 (Training Requirements), and Section 200.200 (Violations). The capacity of a deemed permitted facility that does not have a lagoon is the number of animals permitted by the Department prior to the effective date of these regulations. For deemed permitted facilities with lagoons, the capacity is the maximum capacity of the existing lagoon as determined using the appropriate lagoon capacity design criteria of the United States Department of Agriculture's Natural Resource Conservation Service.

2. All existing animal facilities with permits issued by the Department between June 26, 1998 and the effective date of these regulations do not need to apply for a new permit if they hold a valid permit from the Department, unless they have been closed for more than two years. These facilities shall meet all the requirements of these regulations.

3. All existing animal facilities that were constructed and placed into operation prior to June 26, 1998, but have never received an agricultural permit from the Department, shall apply for a permit from the Department. This facility shall meet all the requirements of this regulation as the Department determines appropriate. The Department shall review the site and make a determination on a case-by-case basis on which requirements are applicable.

4. An existing animal facility may be required to obtain an updated Animal Facility Management Plan on a case-by-case basis by the Department. The Department shall notify the permittee in writing of this requirement. The permittee has six months from the date of notification to submit an updated Animal Facility Management Plan. Failure to submit the updated plan within this time frame is a violation of the Pollution Control Act and these regulations, and may result in permit revocation.

5. Both the setbacks and other requirements for manure utilization areas shall be met when a new manure utilization area is added by the owner of any animal facility regardless of when the facility was permitted.

6. If an existing animal facility regulated under this part proposes to convert to a swine facility, it shall be considered a new swine facility under these regulations. Converted facilities shall be permitted as new swine facilities and meet all criteria for new swine facilities before they begin operation as a swine facility.

200.20 Permits and Compliance Period.

A. Permit Requirement. Animal manure and other animal by-products from a new or expanded animal facility can only be generated, handled, stored, treated, processed, or land applied in the State in accordance with a permit issued by the Department under the provisions of this part. Existing producers that are required by the Department to update their Animal Facility Management Plan shall meet the requirements of this part to the extent practical as determined by the Department.

B. Permits issued under this regulation are no-discharge permits.

C. The requirements in this part shall be implemented through a permit issued to any producer who operates an animal facility where animal manure and other animal by-products are produced, processed, or disposed.

D. The requirements under this part may be addressed in permits issued to producers who only land apply animal manure and other animal by-products.

E. Notification Requirements. The permittee shall notify the Department in writing and receive written Departmental approval, except where noted otherwise, prior to any change in operational procedures at a permitted facility, including, but not limited to, the following:

1. Change in ownership and control of the facility. The Department has thirty days from the receipt of a notification of transfer of ownership to either: request additional information regarding the transfer or the new

60 FINAL REGULATIONS

owner; deny the transfer; or approve the transfer of ownership. If the Department does not act within thirty days, the transfer is automatically approved. If additional information is requested by the Department in a timely manner, the Department shall act on this additional information, when it is received, within the same time period as the initial notification.

2. Increase in the permitted number of animals.
3. Addition of manure utilization areas.
4. Change in manure and other animal by-products treatment, handling, storage, processing, or utilization.
5. Change in method of dead animal disposal.

F. Permit Modification. Permit modifications for items 200.20.E.2 and 200.20.E.4 for facilities regulated under this part which will result in expansions shall adhere to the requirements of this part and other applicable statutes, regulations, or guidelines.

G. Permit modification for items 200.20.E.2 which result in an expansion may be required to obtain new written waivers or agreement for reduction of setbacks from adjoining property owners (if applicable).

200.30 Exclusions. The following do not require permits from this part unless specifically required by the Department under item 200.30.G.

A. Existing animal facilities that are deemed permitted under Section 200.10.D.1 are excluded from applying for a new permit unless an expansion is proposed, new manure utilization areas are added, or as required by the Department. However, deemed permitted facilities shall meet the requirements of this regulation as outlined in Section 200.10.D (Purpose, Applicability, Inactive Facilities and Facilities Permitted Prior to the Effective Date of Regulation).

B. Except as given in Section 200.30.G, animal facilities with only ranged animals and no lagoon, treatment system, or manure storage pond is associated with the facility are excluded from obtaining a permit from the Department. The range area shall be of sufficient size to allow for natural degradation or utilization of the animal manure with no adverse impact to the environment. Ranged facilities shall also maintain adequate vegetative buffers between the animal range and waters of the State.

C. Except as given in Section 200.30.G, animal facilities, that do not have a lagoon, manure storage pond or liquid manure treatment system, having 10,000 pounds or less of normal production animal live weight at any one time are excluded from obtaining a permit from the Department, but these facilities shall have and implement an Animal Facility Management Plan for their facility that meets the requirements of this regulation.

D. Except as given in Section 200.30.G, animal facilities, that do not have a lagoon, manure storage pond or liquid manure treatment system, having more than 10,000 pounds of normal production animal live weight at any one time and having less than 30,000 pounds of normal production animal live weight at any one time are excluded from obtaining a permit from the Department. However, these facilities shall submit an Animal Facility Management Plan to the Department and implement an Animal Facility Management Plan for their facility that meets the requirements of this regulation.

E. Except as given in Section 200.30.G, animal facilities that are not classified as commercial facilities are excluded from obtaining a permit from the Department.

F. Except as given in Section 200.30.G, animal facilities that hold valid permits issued by the Department are not required to obtain a new permit if they decide to replace in kind any of the animal growing houses. If the

permittee chooses to leave the old houses in place to utilize for another purpose other than housing animals, the Department shall perform a preliminary site inspection for the proposed location of the replacement houses and approve the site prior to construction.

G. Animal facilities exempted under Sections 200.30.A, B, C, D, E and F may be required by the Department to obtain a permit. The Department shall visit the site before requiring any of these facilities to obtain a permit.

200.40 Relationship to Other Regulations. The following regulations are referenced throughout this part and may apply to facilities covered under this regulation.

A. Nuisances are addressed in Regulation 61-46.

B. Application and annual operating fees are addressed in Regulation 61-30.

C. The proper closeouts of wastewater treatment facilities are addressed in Regulation 61-82. This includes animal lagoons and manure storage ponds.

D. Permitting requirements for concentrated animal feeding operations as defined by Regulation 61-9 are contained in Regulation 61-9.

E. Setbacks and construction specifications for potable water wells and monitoring wells shall be in accordance with Regulation 61-71.

F. Permits for air emissions from incinerators are contained in Regulation 61-62.

G. Disposal of animal manure in a municipal solid waste landfill unit is addressed in Regulation 61-107.258.

H. Disposal of animal manure with domestic or industrial sludge is addressed in Regulation 61-9.

I. Procedures for contested cases are addressed in Regulation 61-72 and the Rules of the State's Administrative Law Judge Division.

J. Laboratory Certification is addressed in Regulation 61-81.

K. Water Classifications and Standards are addressed in Regulation 61-68.

200.50 Permit Application Procedures (Animal Facility Management Plan Submission Requirements).

A. Preliminary Site Evaluations. The Department shall perform a preliminary evaluation of the proposed site at the request of the applicant. Written requests for preliminary site inspection shall be made using a form, as designated by the Department. The Department shall not schedule a preliminary site inspection until all required information specified in the form has been submitted to the Department. This evaluation should be performed prior to preparation of the Animal Facility Management Plan. Once the preliminary site inspection is performed, the Department shall issue an approval or disapproval letter for the proposed site.

B. A producer who proposes to build a new animal facility or expand an existing animal facility shall make application for a permit under this part using an application form as designated by the Department. The following information shall be included in the application package.

1. A completed application form.

62 FINAL REGULATIONS

2. An Animal Facility Management Plan prepared by qualified Natural Resources Conservation Service personnel or a SC registered professional engineer. Other qualified individuals, such as soil scientists, etc., may prepare the land application component of an Animal Facility Management Plan. The Animal Facility Management Plan shall at a minimum contain:

- a. Facility name, address, telephone number, county, and National Pollutant Discharge Elimination System Permit or other permit number (if applicable);
- b. Facility location description and the zoning restrictions in this area (this information is available from the county);
- c. Applicant's name, address, and telephone number (if different from above);
- d. Operator's name;
- e. Facility capacity;
 - i. Number and type of animals;
 - ii. Pounds of normal production animal live weight at any one time;
 - iii. Amount of animal manure and other animal by-products generated per year (gallons for liquid animal manure and pounds for dry animal manure);
 - iv. Amount in tons of any scraped or separated solid animal manure and other animal by-products generated per year (if applicable);
 - v. Description of animal manure and other animal by-products storage and storage capacity of lagoon, treatment system or manure storage pond (if applicable); and
 - vi. Description of animal manure and other animal by-products treatment (if any).
- f. Concentration of constituents in liquid animal manure including but not limited to the constituents given below:
 - i. Nutrients.
 - (a) Nitrate (only needed for aerobic systems).
 - (b) Ammonium-Nitrogen.
 - (c) Total Kjeldahl Nitrogen (TKN).
 - (d) Organic-Nitrogen (TKN - Ammonium-Nitrogen).
 - (e) P₂O₅.
 - (f) K₂O (potash).
 - ii. Constituents.
 - (a) Arsenic.

(b) Copper.

(c) Zinc.

iii. Name, address, SC lab certification number, and telephone number of the laboratory conducting the analyses.

iv. For new animal facilities, liquid animal manure analysis information does not have to be submitted as the Department shall use manure analyses from similar sites or published data (such as: Clemson University, American Society of Agricultural Engineers, Midwest Planning Service Document, NRCS Technical Guide or equivalent) in review of the application. Analysis of the actual animal manure generated shall be submitted to the Department twelve months after a new animal facility starts operation or prior to the first application of animal manure to a manure utilization area, whichever occurs first. If this analysis is significantly different from the estimated analysis used in the permitting decision, the Department may require a permit modification as necessary to address the situation. Analysis shall be conducted by a laboratory certified by the Department. This laboratory shall have and maintain certification for the constituents to be analyzed.

g. Concentration of constituents in dry animal manure including but not limited to the following:

i. Nutrients (on a dry weight basis).

(a) Total Kjeldahl Nitrogen (mg/kg).

(b) Total inorganic nitrogen (mg/kg).

(c) Total ammonia nitrogen (mg/kg) and Total nitrate , nitrogen (mg/kg).

(d) P₂O₅ (mg/kg).

(e) K₂O (mg/kg).

(f) Calcium Carbonate equivalency (if animal manure is alkaline stabilized).

ii. Constituents (on a dry weight basis).

(a) Arsenic (mg/kg).

(b) Copper (mg/kg).

(c) Zinc (mg/kg).

iii. Name, address, SC lab certification number, and telephone number of the laboratory conducting the analyses.

iv. For new animal facilities, dry animal manure analysis information does not have to be submitted as the Department shall use manure analyses from similar sites or published data (such as: Clemson University, American Society of Agricultural Engineers, Midwest Planning Service Document, NRCS Technical Guide or equivalent) in review of the application. Analysis of the actual dry animal manure generated shall be submitted to the Department twelve months after a new animal facility starts operation or prior to the first application of animal manure to a manure utilization area which ever occurs first. If this analysis is significantly different from the estimated analysis used in the permitting decision, the Department may require a permit

64 FINAL REGULATIONS

modification as necessary to address the situation. Analysis shall be conducted by a laboratory certified by the Department. This laboratory shall have and maintain certification for the constituents to be analyzed.

h. Animal manure and other animal by-products handling and application information shall be included as follows:

i. A crop management plan which includes the time of year of the animal manure application and how it relates to crop type, crop planting, and harvesting schedule (if applicable) for all manure utilization areas;

ii. Name, address, and telephone number of the producer(s) that will land apply the animal manure and other animal by-products if different from the permittee;

iii. Type of equipment used to transport and/or spread the animal manure and other animal by-products (if applicable); and

iv. For spray application systems, plans and specifications with supporting details and design calculations for the spray application system.

i. Facility and manure utilization area information shall be included (as appropriate):

i. Name and address of landowner and location of manure utilization area(s);

ii. List previous calendar years that animal manure was applied and application amounts, where available;

iii. Facility and manure utilization area location(s) on maps drawn to approximate scale including:

(a) Topography (7.5' or equivalent) and drainage characteristics (including ditches);

(b) Adjacent land usage (within 1/4 mile of property line minimum) and location of inhabited dwellings and public places showing property lines and tax map number;

(c) All known water supply wells on applicant's property and within 200 feet of the facility's property line or within 200 feet of any manure utilization areas;

(d) Adjacent surface water bodies (including ephemeral and intermittent streams);

(e) Animal manure utilization area boundaries and buffer zones;

(f) Right-of-Ways (Utilities, roads, etc.);

(g) Soil types as given by soil tests or soils maps, a description of soil types, and boring locations (if applicable);

(h) Recorded Plats, Surveys, or other acceptable maps that include property boundaries; and

(i) Information showing the 100-year floodplain (as determined by FEMA).

vi. For manure utilization areas not owned by the permit applicant, a signed agreement between the permit applicant and the landowner acceptable to the Department detailing the liability for the land application. The agreement shall include, at a minimum, the following:

- (a) Producer's name, farm name and county in which the farm is located;
- (b) Landowner's name, address, phone number;
- (c) Location (map with road names and county identified) of the land to receive manure application;
- (d) Field acreage, acreage less setbacks, and crops grown;
- (e) Name of manure hauler;
- (f) Name of manure applier;
- (g) A statement that land is not included in any other management plans and manure or compost from another farm is not being applied on this land; and
- (h) A signed statement which informs the landowner that he is responsible for spreading and utilizing this manure in accordance with the requirements of the Department and Regulation 61-43.

v. For other manure utilization areas that are included in multiple Animal Facility Management Plans, identify the names of all facilities that include this manure utilization area in their plan.

3. Groundwater monitoring well details and proposed groundwater monitoring program (if applicable).
4. The Animal Facility Management Plan shall contain an odor abatement plan for the animal facility, lagoon, treatment system, manure storage pond, and manure utilization areas. For more specific details, see Section 200.150 (Odor Control Requirements).
5. A Vector Abatement Plan shall be included for the animal facility, lagoon, treatment system or manure storage pond, and manure utilization areas. For more specific details see Section 200.160 (Vector Control Requirements).
6. Dead Animal Disposal Plan. The plan shall include written details for handling and disposal of dead animals. Plans should detail method of disposal, any construction specifications necessary, and management practices. See Section 200.130 (Dead Animal Disposal Requirements) for specific requirements on dead animal disposal.
7. Soil Monitoring Plan. A soil monitoring plan shall be developed for all manure utilization areas. See Section 200.100 (Manure Utilization Area Requirements) for more detailed information.
8. Plans and specifications for all other manure treatment or storage structures, such as holding tanks or manure storage sheds.
9. All "Notice of Intent to Build or Expand an Animal Facility" forms as provided by the Department and a tax map (or equivalent) to scale showing all neighboring property owners and identifying which property has inhabited dwellings. See Section 200.60 (Public Notice Requirements) for more detailed information.
10. An Emergency Plan. The emergency plan should at a minimum contain a list of entities or agencies the producer should contact in the event of lagoon, treatment system, or manure storage pond breach, major animal

66 FINAL REGULATIONS

mortality, fire, flood or other similar type problem. For facilities in the coastal areas of the state, the emergency plan should address actions to be taken by a producer when advance warning is given on any extreme weather condition.

11. Adjoining property owners written agreement for reduction of setbacks (if applicable).

12. Application fee and first year's operating fee as established by Regulation 61-30.

C. The Department may request an applicant to provide any additional information deemed necessary to complete or correct deficiencies in the animal facility permit application prior to processing the application or issuing, modifying, or denying a permit.

D. Applicants shall submit all required information in a format acceptable to the Department.

E. An application package for a permit is complete when the Department receives all of the required information which has been completed to its satisfaction. Incomplete submittal packages may be returned to the applicant by the Department.

F. Application packages for permit modifications only need to contain the information applicable to the requested modification.

200.60 Public Notice Requirements.

A. For new animal facilities, the applicant shall notify all property owners within 1320 feet of the proposed location of the facility (footprint of construction) of the applicant's intent to build an animal facility. The applicant shall use a notice of intent form provided by the Department. The Department shall also post up to four notices on the perimeter of the property or in close proximity to the property, in visible locations as determined by the Department. The notice of intent shall advise adjoining property owners that they can send comments on the proposed animal facility directly to the Department.

B. For properties that have multiple owners or properties that are in an estate with multiple heirs, the Department, at the expense of the applicant, shall publish a notice of intent to construct an animal facility in a local paper of general circulation in the area of the facility. This notice in the newspaper shall serve as notice to these multiple property owners of the producer's intent to build an animal facility. The cost to run this notice is not included in the application fee, and therefore shall be billed directly to the permit applicant for payment. This notice fee shall be paid prior to the issuance of the permit.

C. For existing animal facilities seeking to expand their current operations, the Department shall post up to four notices on the perimeter of the property or in close proximity to the property, in visible locations as determined by the Department.

D. The Department shall review all comments received. If the Department receives twenty (20) or more letters from different people requesting a meeting or the Department determines significant comment exists, a meeting shall be held to discuss and seek resolution to the concerns prior to a permit decision being made. All persons who have submitted written comments shall be invited in writing to the meeting. First Class US mail service or hand delivery to the address of a person to be notified shall be used by the Department for the meeting invitation. However, if the Department determines that the number of persons who submitted written comments is significant, the Department shall publish a notice of the public meeting in a local newspaper of general circulation instead of notifying each individual by first class mail. In addition, the Department shall notify all group leaders and petition organizers in writing. Agreement of the parties is not required for the Department to make a permit decision.

E. When comments are received by electronic mail, the Department shall acknowledge receipt of the comment by electronic mail. These comments shall be handled in the same manner as written comments received by postal mail.

F. The Department shall consider all relevant comments received in determining a permit decision.

G. The Department shall give notice of the permit decision to issue or deny the permit to the applicant, all persons who commented in writing to the Department, and all persons who attended the meeting, if held. First Class US mail service shall be used by the Department for the notice of decision. However, if the Department determines that members of the same group or organization have submitted comments or a petition, the Department shall only notify all group leaders and petition organizers in writing. The Department shall ask these leaders and organizers to notify their groups or any concerned citizens who signed the petitions.

H. For permit issuances, the Department shall publish a notice of issuance of a permit to construct or expand an animal facility in a local newspaper of general circulation in the area of the facility.

I. For permit denials, the Department shall give the permit applicant a written explanation, which outlines the specific reasons for the permit denial.

J. For permit denials, the Department shall publish a notice of decision in a local newspaper of general circulation in the area of the facility or send each concerned citizen who submitted written comments a letter by first class mail.

K. The Department shall include, at a minimum, the following information in the public notices on permit decisions: the name and location of the facility; a description of the operation and the method of manure handling; instructions on how to appeal the Department's decision; the time frame for filing an appeal; the date of the decision; and the date upon which the permit becomes effective.

200.70 Permit Decision Making Process

A. No permit shall be issued before the Department receives a complete application for a permit.

B. The agricultural program of the Department is not involved in local zoning and land use planning. Local government(s) may have more stringent requirements for agricultural animal facilities. The permittee is responsible for contacting the appropriate local government(s) to ensure that the proposed facility meets all the local requirements.

C. After the Department has received a complete application package, a technical review shall be conducted by the Department. The Department may request any additional information or clarification from the applicant or the preparer of the Animal Facility Management Plan to help with the determination on whether a permit should be issued or denied. If a permit application package meets all applicable requirements of this part, a permit may be issued.

D. A site inspection shall be made by the Department before a permit decision is made.

E. The Department shall act on all permits to prevent, so far as reasonably possible considering relevant standards under state and federal laws, an increase in pollution of the waters and air of the State from any new or enlarged sources.

F. The setback limits given in this part are minimum siting requirements (with exception to those that are not labeled as minimum requirements, which are absolutes). On a case-by-case basis the Department may require additional separation distances applicable to animal facilities, lagoons, treatment systems, manure storage ponds,

68 FINAL REGULATIONS

and manure utilization areas. The Department shall evaluate the proposed site including, but not limited to, the following factors when determining if additional distances are necessary:

1. Proximity to 100-year floodplain;
2. Geography and soil types on the site;
3. Location in a watershed;
4. Classification or impairment of adjacent waters;
5. Proximity to a State Designated Focus Area; Outstanding Resource Water; Heritage Corridor; Historic Preservation District; State Approved Source Water Protection Area; state or national park or forest; state or federal research area; and privately-owned wildlife refuge, park, or trust property;
6. Proximity to other known point source discharges and potential nonpoint sources;
7. Slope of the land;
8. Animal manure application method and aerosols;
9. Runoff prevention;
10. Adjacent groundwater usage;
11. Down-wind receptors; and
12. Aquifer vulnerability.

G. The appeal of a permit decision is governed by the SC Administrative Procedures Act, Regulation 61-72, and the Rules of the State's Administrative Law Judge Division.

H. When a permit is issued it shall contain an issue date, an effective date and when applicable a construction expiration date. The effective date shall be at least twenty (20) days after the issue date to allow for any appeals. If a timely appeal is not received, the permit shall be effective on the effective date.

I. The permit may contain a permit expiration date. If a facility is classified as a CAFO under the NPDES Regulation 61-9, the expiration date shall be no more than five years after the issue date.

J. An expired permit (final expiration date for renewal) issued under this part continues in effect until a new permit is effective if the permittee submits a complete application, to the satisfaction of the Department, at least 180 days before the existing permit expires. The Department may grant permission to submit an application later than the deadline for submission stated above, but no later than the permit expiration date. If the facility has been closed for any two consecutive years since the last permit was issued, the provision for the expiring permit remaining in effect does not apply since the permit is no longer valid. Permittees shall notify the Department in writing within 30 days of when they go out of business.

K. The animal facility, lagoon, treatment system, or manure storage pond can be built only when the permit is effective with no appeals pending. The facility cannot be placed into operation until the Department grants written authorization to begin operations.

L. To receive authorization to begin operations, the producer shall have the preparer of the Animal Facility Management Plan submit to the Department written certification that the construction has been completed in accordance with the approved Animal Facility Management Plan and the requirements of this regulation.

M. The Department may conduct a final inspection before granting authorization to a producer to begin operations.

N. The Department shall grant written authorization for the producer to begin operations after it has received the certification statement in 200.70.L and the results of the final inspection, if conducted, are satisfactory.

O. Animal Facility Construction Permit Expiration and Extensions.

1. Construction permits issued by the Department for agricultural animal facilities shall be given two years from the effective date of the permit to start construction and three years from the effective date of the permit to complete construction.

2. If the construction proposed under the permit is not started prior to the construction start expiration date, the construction permit is invalid unless an extension in accordance with this regulation is granted.

3. If construction is not completed and the facility is not placed into operation prior to the construction completion expiration date, the construction permit is invalid unless an extension in accordance with this regulation is granted.

4. If a portion of the permitted facility (some of the animal growing house are completely constructed, but not all houses originally permitted were constructed) is completed prior to the construction completion expiration date, the construction for the remainder of the permit may be utilized within the permit life. The permittee shall obtain Departmental approval prior to utilizing the permit in this manner. The Department may require that the permittee submit additional information or update the Animal Facility Management Plan prior to approval.

5. Extensions of the permit construction start and completion expiration dates may be granted by the Department. The permittee shall submit a written request explaining the delay and detailing any changes to the proposed construction. This request shall be received not later than 10 days prior to the date that the permittee proposes to extend. The maximum extension period shall not exceed one year.

200.80 Facility, Lagoon, Treatment Systems and Manure Storage Pond Siting Requirements

A. Siting requirements applicable to all animal facilities.

1. The minimum separation distance between an animal facility (animal growing areas, houses, pens or barns, not including range areas or manure utilization areas) and a public or private drinking water well (excluding the applicant's well) is 200 feet. The minimum separation distance between an animal facility and a potable water well owned by the applicant is 50 feet (as required by R.61-71).

2. The minimum separation distance between an animal facility and waters of the State (including ephemeral and intermittent streams) located down slope from the facility is 100 feet. The setbacks required from ephemeral and intermittent streams may be reduced by the Department, if a permanent vegetative water quality buffer, that meets NRCS standards at a minimum, is installed and maintained.

3. Except for site drainage, the minimum separation distance required between an animal facility and a ditch or swale located down slope from the facility is 50 feet. The setbacks required from ditches may be reduced

70 FINAL REGULATIONS

by the Department, if a permanent vegetative water quality buffer, that meets NRCS standards at a minimum, is installed and maintained.

4. A new animal facility or an expansion of an established animal facility shall not be located in the 100-year floodplain.

5. The separation distance required between the animal facility or growing areas (pens or barns not including range areas) and the lot line of real property owned by another person is 200 feet or 1000 feet from the nearest residence, whichever is greater, when the normal production animal live weight at any time is 500,000 pounds or less.

6. The separation distance required between the animal facility or growing areas (pens or barns not including range areas) and the lot line of real property owned by another person is 400 feet or 1000 feet from the nearest residence, whichever is greater, when the normal production animal live weight at any time is greater than 500,000 pounds.

B. Siting requirements applicable to all animal lagoons, treatment systems, and manure storage ponds.

1. The minimum separation distance between a lagoon, treatment system, or manure storage pond and a public or private drinking water well (excluding the applicant's well) is 200 feet. The minimum separation distance between an animal lagoon, treatment system, or manure storage pond and a potable water well owned by the applicant is 100 feet.

2. The minimum separation distance between an animal lagoon, treatment system, or manure storage pond and ephemeral and intermittent streams located down slope from the facility is 100 feet. The setback from ephemeral and intermittent streams may be reduced by the Department, if a permanent vegetative water quality buffer, that meets NRCS standards at a minimum, is installed and maintained.

3. Except for site drainage, the minimum separation distance required between an animal lagoon, treatment system, or manure storage pond and a ditch or swale located down slope from the facility is 50 feet. The setback from ditches may be reduced by the Department, if a permanent vegetative water quality buffer, that meets NRCS standards at a minimum, is installed and maintained.

4. The minimum separation distance required between an animal lagoon, treatment system, or manure storage pond and waters of the state (not including ephemeral and intermittent streams) located down slope from the facility is 100 feet. If the waters of the State are designated Outstanding Resource Waters, Critical Habitat Waters of federally endangered species, or Shellfish Harvesting Waters, the minimum separation distance required between a lagoon, treatment system, or manure storage pond and waters of the State is 500 feet.

5. A new animal lagoon, treatment system, or manure storage pond or an expansion of an established animal lagoon, treatment system, or manure storage pond shall not be located in the 100-year floodplain.

6. The separation distance required between a lagoon, treatment system, or manure storage pond and real property owned by another person is 300 feet or 1000 feet from the nearest residence, whichever is greater, when the normal production animal live weight at any time is 500,000 pounds or less.

7. The separation distance required between a lagoon, treatment system, or manure storage pond and real property owned by another person is 500 feet or 1000 feet from the nearest residence, whichever is greater, when the normal production animal live weight at any time is greater than 500,000 pounds.

C. Siting requirements applicable to all dry animal manure and other animal by products treatment or storage facilities (including, but not limited to, stacking sheds and manure or dead animal composters).

1. The minimum separation distance between a dry animal manure and other animal by-products treatment or storage facility and a public or private drinking water well (excluding the applicant's well) is 100 feet. The minimum separation distance between a dry animal manure and other animal by-products treatment or storage facility and a potable water well owned by the applicant is 50 feet.

2. Except for site drainage, the minimum separation distance required between a dry animal manure and other animal by-products treatment or storage facility and a ditch or swale located down slope from the facility is 50 feet. The setback from ditches may be reduced by the Department, if a permanent vegetative water quality buffer, that meets NRCS standards at a minimum, is installed and maintained.

3. The minimum separation distance between a dry animal manure and other animal by-products treatment or storage facility and waters of the State including ephemeral and intermittent streams located down slope from the facility is 100 feet. The setback from ephemeral and intermittent streams may be reduced by the Department, if a permanent vegetative water quality buffer, that meets NRCS standards at a minimum, is installed and maintained.

4. A new dry animal manure and other animal by-products treatment or storage facility or an expansion of an established dry animal manure and other animal by-products treatment or storage facility shall not be located in the 100-year floodplain.

5. The separation distance required between a dry animal manure and other animal by-products treatment or storage facility operated at an animal growing facility and the lot line of real property owned by another person shall be equivalent to the setback required for the animal growing areas or houses.

6. The minimum separation distance required between a dry animal manure and other animal by-products treatment or storage facility operated by a manure broker and the lot line of real property owned by another person is 200 feet. However, the Department shall evaluate each proposed site to consider increasing this minimum amount, when the amount of manure stored, treated or processed at this facility is significant.

D. Water (a pond) that is completely surrounded by land owned by the permit applicant and has no connection to surface water is excluded from the setback requirements outlined in this part.

E. All lagoon and manure storage pond setbacks contained in this part shall be measured from the outside toe of the dike.

F. The setback limits given in this part are minimum siting requirements, except those not labeled as minimum requirements, which are absolutes. On a case-by-case basis the Department may require additional separation distances for the minimum setbacks applicable to animal facilities. See Section 200.70.F. (Permit Decision Making Process), which outlines some of the factors considered to determine if additional setbacks should be required.

G. The separation distances for property lines given in Section 200.80.A, B, and C above can be waived or reduced by written consent of the adjoining property owner. Written consent is not needed when the Department reduces the distances under the requirements of Part 300.

H. The separation distances to the property lines of adjacent land as provided in Section 200.80.A, B and C above do not apply to an animal facility, lagoon, treatment system, or manure storage pond which is constructed or expanded, if the adjoining land is owned and managed by a professional silvicultural corporation, is currently in agricultural crop production, or is zoned for agricultural land use. However, the separation distances for residences shall be met by the animal facility, lagoon, treatment system, or manure storage pond, unless a written waiver from the property owner has been obtained.

72 FINAL REGULATIONS

200.90 General Requirements for Animal Manure Lagoons, Treatment Systems, and Animal Manure Storage Ponds.

A. The lagoon, treatment system, or manure storage pond shall be designed by a professional engineer or an NRCS engineer and the construction shall be certified by the design engineer. It is a violation of these regulations and the Pollution Control Act for the owner or operator of the facility to make modifications or physical changes to the lagoon, treatment system, or manure storage pond without the prior approval of the Department and supervision of NRCS or a professional engineer. Plans and specifications for lagoon, treatment system, or manure storage pond modifications shall be designed and certified by NRCS or a professional engineer and submitted to the Department for approval prior to the modification.

B. Animal manure lagoons and manure storage ponds shall be designed at a minimum to NRCS-CPS. The lagoon or manure storage pond shall be designed to provide a minimum storage for manure, wastewater, normal precipitation less evaporation, normal runoff, residual solids accumulation, capacity for the 25 year- 24 hour storm event (precipitation and associated runoff) and at least one and one half (1 ½) feet of freeboard.

C. All lagoons and storage ponds shall be provided with a liner, designed with an initial specific discharge rate of less than 0.0156 feet/day in order to protect groundwater quality. When lagoons or manure storage ponds are lined only using soils with low permeability rates (e.g., clay), the Department shall require appropriate documentation to demonstrate that the computed soil permeability rates of the liner are sufficiently low or certification from the preparer of the Animal Facility Management Plan that the NRCS design standards for lining lagoons and/or manure storage ponds with soils have been met. When geomembrane liners are utilized, they shall be designed, at a minimum, to meet NRCS-CPS.

D. If seepage results in either an adverse impact to groundwater or a significant adverse trend in groundwater quality occurs as determined by the Department, the lagoon or manure storage pond shall be repaired at the owner's or operator's expense. Assessment and/or additional monitoring (more wells, additional constituents, and/or increased sampling frequency) may be required by the Department to further assess the extent of the seepage. The repairs and/or assessment shall be completed in accordance with an implementation schedule approved by the Department. The Department may require groundwater corrective action.

E. Manure shall not be placed directly in or allowed to come into contact with groundwater and/or surface water. The minimum separation distance between the lowest point of the lagoon or manure storage pond and the seasonal high water table beneath the lagoon or manure storage pond is 2 feet. If a geomembrane liner is installed, the minimum separation distance is one foot from the seasonal high water table. Designs that include controlled drainage for water table adjustment shall be evaluated by the Department on a case-by-case basis, and may include additional monitoring and groundwater control requirements. If a design is proposed for water table adjustment, the design shall not impact wetlands.

F. Monitoring wells may be required by the Department on a case-by-case basis upon Department review of the submittal package.

G. A groundwater monitoring plan shall be submitted with the permit application to the Department. All applicable State certification requirements regarding well installation, laboratory analyses and report preparation shall be met. Each groundwater monitoring well installed shall be permitted and shall be sampled at least once annually by qualified personnel at the expense of the permittee. The results shall be submitted to the Department in accordance with the specified permit requirements. Groundwater Sampling results shall be maintained by the producer for eight years. The Department may conduct routine and random visits to the animal facility to sample the monitoring wells.

H. Prior to operation of the lagoon or manure storage pond, all monitoring wells shall be sampled in accordance with the parameters identified in the permit such that a background concentration level can be established.

I. Before the construction of a lagoon and/or a manure storage pond, the owner or operator shall remove all under-drains that exist from previous agricultural operations that are under the lagoon or manure storage pond and/or within twenty-five (25) feet of the outside toe of the proposed lagoon or manure storage pond dike. This requirement does not include under-drains that are approved as a part of designs that include controlled drainage for water table adjustment.

J. Proper water levels in lagoons and manure storage ponds, as per plans and specifications, shall be maintained at all times by the permittee. The Department may require specific lagoon or manure storage pond volume requirements in permits.

K. If a lagoon, treatment system, or manure storage pond, or both, breaches or fails in any way, the owner or operator of the animal facility shall immediately notify the Department, the appropriate local government officials, and the owners or operators of any potable surface water treatment plant located downstream from the animal facility that could reasonably be expected to be adversely impacted.

L. Lagoons and manure storage ponds shall be completely enclosed with an acceptable fence, unless a fence waiver is obtained from the Department.

M. Lagoons and manure storage ponds shall have at least four warning signs posted around the perimeter of the structure. These signs should read, "Warning - Deep and Polluted Water", and one should be posted on each side of the lagoon or manure storage pond.

N. Vegetation on the dikes and around the lagoon, treatment system or manure storage pond should be kept below a maximum height of eighteen inches. Trees or deeply rooted plants shall be prevented from growing on the dikes or within 25 feet of the outside toe of the dikes of the lagoon, treatment system or manure storage pond.

O. Livestock or other animals that could cause erosion or damage to the dikes of the lagoon, treatment system, or manure storage pond shall not be allowed to enter the lagoon, treatment system or manure storage pond, or graze on the dike or within 25 feet of the outside toe of the dike.

P. The Department shall require existing facilities, regardless of size, with a history of manure handling, treatment, and disposal problems related to a lagoon, to phase out the existing lagoon and incorporate new technology.

200.100 Manure Utilization Area Requirements

A. Application Rates. The Department shall approve an Animal Facility Management Plan that establishes an application rate for each manure utilization area based on the agronomic application rate of the specific crop(s) being grown, and the manure and other animal by-products impact on the environment. The application rate shall be based on the limiting constituent (a nutrient or other constituent as given in item 200.100.B).

B. Constituent Limits for Land Application of Liquid and Dry Animal manure and other animal by-products and Operational Practices for Land Application.

1. Liquid and dry animal manure and other animal by-products. Animal manure and other animal by-products containing only the standard constituents at normal concentrations as given by commonly accepted reference sources, such as Clemson University, American Society of Agricultural Engineers, Midwest Planning Service Document, or NRCS, can be land applied at or below agronomic rates without any specific constituent limits in a permit. When the animal manure analysis indicates there are levels of arsenic, copper, zinc, or other constituents of concern, the Department shall establish constituent limits in permits for each constituent of concern to ensure the water quality standards of Regulation 61-68 are maintained. For these cases the producer shall comply with the following criteria:

74 FINAL REGULATIONS

a. Constituent Limits. If animal manure and other animal by-products subject to a constituent limit is applied to land, either:

i. The cumulative loading rate for each constituent shall not exceed the cumulative constituent loading rate for the constituent in Table 1 of Section 200.100; or

ii. The concentration of each constituent in the animal manure and other animal by-products shall not exceed the concentration for the constituent in Table 2 of Section 200.100.

b. Constituent concentrations and loading rates - animal manure and other animal by-products.

i. Cumulative constituent loading rates.

TABLE 1 OF SECTION 200.100 - CUMULATIVE CONSTITUENT LOADING RATES

| Constituent | (kilograms per hectare) | (pounds per acre) |
|-------------|-------------------------|-------------------|
| Arsenic | 41 | 37 |
| Copper | 1500 | 1339 |
| Zinc | 2800 | 2499 |

ii. Constituent concentrations.

TABLE 2 OF SECTION 200.100 - CONSTITUENT CONCENTRATIONS

| Constituent | Dry weight basis (milligrams per kilogram) |
|-------------|--|
| Arsenic | 41 |
| Copper | 1500 |
| Zinc | 2800 |

iii. Annual constituent loading rates.

TABLE 3 OF SECTION 200.100 - ANNUAL CONSTITUENT LOADING RATES

| Constituent | (kilograms per hectare per 365-day period) | (pounds per acre per 365 day period) |
|-------------|--|--------------------------------------|
| Arsenic | 2.0 | 1.8 |
| Copper | 75 | 67 |
| Zinc | 140 | 125 |

c. Additional constituents may be required, from the application information or subsequent monitoring in a permit thereafter, but such needs shall be assessed on an individual project basis.

d. No producer shall apply animal manure and other animal by-products subject to the cumulative constituent loading rates in Table 1 of Section 200.100.B.1 to land if any of the rates in Table 1 of Section 200.100.B.1 have been reached.

e. No producer shall apply animal manure and other animal by-products or animal lagoon sludge to land during a 365-day period after the annual application rate in Table 3 of Section 200.100.B.1 has been reached.

f. If animal manure subject to the cumulative constituent loading rates in Table 1 of Section 200.100.B.1 has not been applied to the site, those cumulative rates apply.

g. If animal manure and other animal by-products subject to the cumulative constituent loading rates in Table 1 of Section 200.100.B.1 has been applied to the site and the cumulative amount of each constituent applied to the site in the animal manure and other animal by-products is known, the cumulative amount of each constituent applied to the site shall be used to determine the additional amount of each constituent that can be applied to the site in accordance with Section 200.100.B.1.a.i (cumulative loading rate shall not exceed the cumulative constituent loading rate).

h. Manure application shall not exceed the agronomic rate of application for plant available nitrogen (PAN) for the intended crop(s) on an annual basis. For those years that fertilizer is land applied, manures in combination with the fertilizer shall not exceed the agronomic rate of nutrient utilization of the intended crop(s).

2. Any producer who confines animals shall ensure that the applicable requirements in this part are met when the animal manure and other animal by-products are applied to the land.

3. Animal manure and other animal by-products shall not be applied to land that is saturated from recent precipitation, flooded, frozen, or snow-covered. Animal manure and other animal by-products shall not be applied during inclement weather or when a significant rain event is forecasted to occur within 48 hours.

4. Animal manure and other animal by-products shall not be placed directly in groundwater.

5. The land application equipment, when used once or more per year, shall be calibrated at least annually by the producer. A permit may require more frequent calibrations to ensure proper application rates. The two most recent calibration records should be retained by the producer and made available for Department review upon request. If the land application equipment has not been used in over a year, the equipment shall be calibrated prior to use.

6. No producer shall apply animal manure and other animal by-products to the land except in accordance with the requirements in this part.

7. A producer who supplies animal manure and other animal by-products to another person for land application shall provide the person who will land apply the manure and other animal by-products with the concentration of plant available nitrogen, phosphorus, potassium and the concentration of all other constituents listed in the permit. The producer shall also supply the person who will land apply the manure with a copy of the crop management plan included in their Animal Facility Management Plan or a copy of the Land Application Requirements brochure approved by the Department which outlines the land application requirements and responsibility for proper management of animal manure.

8. Animal manure and other animal by-products shall not be applied to or discharged onto a land surface when the vertical separation between the ground surface and the seasonal high water table is less than 1.5 feet at the time of application unless approved by the Department. For special cases, no land application can occur when the vertical separation from the ground surface to the water table is less than 1.5 feet at the time of application unless a situation is deemed an emergency with departmental concurrence.

9. Soil sampling (usually 6-8 inch depth) shall be conducted for each field prior to manure application to determine the appropriate application rate. Each field should be sampled at least once per year. If manure application frequency shall be less than once per year, then at least one soil sample shall be taken prior to returning to that field for land application. All new manure utilization areas shall be evaluated using the NRCS-CPS to determine the suitability for application and the limiting nutrient (nitrogen or phosphorus). However, fields that are high in phosphorus may also be required to incorporate additional runoff control or soil conservation features as directed by the Department.

76 FINAL REGULATIONS

10. Soil sampling to a depth of eighteen inches shall be performed within 45 days after each application of animal manure, but no more than two times per year if the application frequency is more than twice per year. This sampling shall be performed for at least three years after the initial application on at least one representative manure utilization area for each crop grown to verify the estimated calculated manure application rates for the utilization areas. The date of manure application and the date of sampling shall be carefully recorded. The sampling shall be conducted at depths of zero to six inches, six to twelve inches, and twelve to eighteen inches with nitrates and phosphorus being analyzed.

11. The results of the pre-application and post-application sampling shall be used by the producer to adjust as necessary, the amount of animal manure to be applied to a manure utilization area to meet the agronomic application rate for the crop(s) to be grown. These results shall be submitted to the Department at the time of application for permit renewal.

12. Additional soil sampling to greater depths may be required by the Department on a case-by-case basis to ensure there is no potential for groundwater contamination. The permit shall give the appropriate depth and frequency for all soil sampling.

13. The permittee shall obtain information needed to comply with the requirements in this part.

14. All persons who routinely accept manure from a producer, in quantities greater than twelve tons per recipient per year, shall be listed in the approved Animal Facility Management Plan. The Animal Facility Management Plan shall include the appropriate manure utilization area information for the sites routinely used by other persons. The producer shall inform the recipient of their responsibility to properly manage the land application of manure to prevent discharge of pollutants to waters of the State (including ephemeral and intermittent streams). The person accepting the manure may be required by the Department to have an Animal Facility Management Plan and a permit for their manure utilization areas.

15. All persons who accept manure from a producer, regardless of whether the land is included in the waste management plan, are responsible for land applying the manure in accordance with these requirements. The Department may require the person(s) land applying the manure to correct any problems that result from the application of manure.

16. Animal manure shall not be applied to cropland more than 30 days before planting or during dormant periods for perennial species, unless otherwise approved by the Department in an emergency situation.

17. When the Department receives nuisance complaints on a land application site, the Department may restrict land application of animal manure on weekends.

18. The Department may require manure, spread on cropland, to be disked in immediately.

19. Manure (solid or liquid) shall only be applied when weather and soil conditions are favorable and when prevailing winds are blowing away from nearby dwellings. Animal manure should not be applied to land when the soil is saturated, flooded, during rain events, or when a significant rain event is forecasted to occur within 48 hours.

20. Manure shall not be spread in the floodplain if there is danger of a major runoff event, unless the manure is incorporated during application or immediately after application.

21. If the manure is stockpiled more than three (3) days, the manure shall be stored on a concrete pad or other approved pad (such as plastic or clay lined) and covered with an acceptable cover to prevent odors, vector attraction, and runoff. The cover should be properly vented with screen wire to let the gases escape. The edges of the cover should be properly anchored.

22. Producers who contract to transfer the animal manure and other animal by-products produced at their facility to a manure broker shall obtain and submit for approval an updated Animal Facility Management Plan if they discontinue using the designated broker or if the manure broker goes out of the manure brokering business.

C. Setbacks for manure utilization areas.

1. The minimum separation distance in feet required between a manure utilization area and a residence is 300 feet. If there are no residences within 300 feet of the manure utilization area, manure may be applied up to the property line. The 300-foot setback is waived with the consent of the owner of the residence. If the application method is injection or immediate incorporation, manure may be applied up to the property line. The setbacks are imposed at the time of application. The Department may impose these setbacks on previously approved sites to address problems on a case-by-case basis.

2. The minimum separation distance in feet required between a manure utilization area and waters of the State (including ephemeral and intermittent streams) located down slope from the area is 100 feet when spray application is the application method or when the manure is spread on the ground surface, 75 feet when incorporation is the application method, and 50 feet when injection is the application method. When incorporation is accomplished within twenty-four hours of the initial application, the distance can be reduced to 50 feet.

3. The minimum separation distance in feet required between a manure utilization area and ditches and swales, located down slope from the area, that discharge to waters of the State including ephemeral and intermittent streams is 50 feet.

4. The minimum separation distance in feet required between a manure utilization area and a potable drinking water well is 100 feet.

5. The Department may establish in permits additional application buffer setbacks for property boundaries, roadways, residential developments, dwellings, water wells, drainage ways, and surface water (including ephemeral and intermittent streams) as deemed necessary to protect public health and the environment. Factors taken into consideration in the establishment of additional setbacks would be animal manure application method, adjacent land usage, public access, aerosols, runoff prevention, adjacent groundwater usage, aquifer vulnerability, and potential for vectors and odors.

6. Water (pond) that is completely surrounded by land owned by the applicant and has no connection to surface water is excluded from the setback requirements outlined in this part.

D. The Department may establish additional permitting restrictions based upon soil and groundwater conditions to ensure protection of the groundwater and surface waters of the State (including ephemeral and intermittent streams). Criteria may include but is not limited to soil permeability, clay content, depth to bedrock, rock outcroppings, aquifer vulnerability, proximity to State Approved Source Water Protection Area, and depth to the seasonal high groundwater table.

E. The Department may establish permit conditions to require that animal manure and other animal by-products application rates remain consistent with the lime and fertilizer requirements for the cover, feed, food, and fiber crops based on land grant universities (in the southeast) published lime and fertilizer recommendations (such as the Lime and Fertilizer Recommendations, Clemson Extension Services, Circular 476).

F. The Department may establish minimum requirements in permits for soil and/or groundwater monitoring, for manure utilization areas. Factors taken into consideration in the establishment of soil and groundwater monitoring shall include groundwater depth, operation flexibility, application frequency, type of animal manure and other animal by-products, size of manure utilization area, aquifer vulnerability, and proximity to a State Approved Source Water Protection Area and loading rate.

78 FINAL REGULATIONS

1. The Department may establish pre-application and post-application site monitoring requirements in permits for limiting nutrients or limiting constituents as determined by the Department.

2. The Department may establish permit conditions, which require the permittee to reduce, modify, or eliminate the animal manure and other animal by-products applications based on the results of this monitoring data.

3. The Department may modify, revoke and reissue, or revoke a permit based on the monitoring data.

G. The Department may require manure to be treated for odor control (i.e., composting or lime stabilizing for dry operations) prior to land application if the manure is not incorporated into the soil at the time of land application or if odors exist or are suspected to exist at an undesirable level. Manure, which has a very undesirable level of odor before treatment, such as turkey manure, shall not normally be permitted to be land applied on land near residences without appropriate treatment for odor control.

200.110 Spray Application System Requirements.

A. Spray application of liquid animal manure using irrigation equipment. This includes all methods of surface spray application, including but not limited to, fixed gun application, traveling or mobile gun application, or center pivot application.

B. Manure utilization area slopes shall not exceed 10 percent unless approved by the Department. The Department may require that slopes be less than 10% based on site conditions.

C. Animal manure distribution systems shall be designed so that the distribution pattern optimizes uniform application.

D. Hydraulic Application Rates.

1. Application rates shall normally be based on the agronomic rate for the crop to be grown at the manure utilization area. As determined by soil conditions, the hydraulic application rate may be reduced below the agronomic rate to ensure no surface ponding, runoff, or excessive nutrient migration to the groundwater occurs.

2. The hydraulic application rate may be limited based on constituent loading including any constituent required for monitoring under this regulation.

E. Animal manure and other animal by products shall not be land applied or discharged onto a land surface when the vertical separation between the ground surface and the seasonal high water table is less than 1.5 feet at the time of application, unless approved by the Department on a case-by-case basis. For special cases, no land application can occur when the vertical separation from the ground surface to the water table is less than 1.5 feet at the time of application unless a situation is deemed an emergency with departmental concurrence.

F. Conservation measures, such as terracing, strip cropping, etc., may be required in specific areas determined by the Department as necessary to prevent potential surface runoff from entering or leaving the manure utilization areas. The Department may consider alternate methods of runoff controls that may be proposed by the applicant, such as berms.

G. A system for monitoring the quality of groundwater may also be required for the proposed manure utilization areas. The location of all the monitoring wells shall be approved by the Department. The number of wells, constituents to be monitored, and the frequency of monitoring shall be determined on a case-by-case basis based upon the site conditions such as type of soils, depth of water table, etc.

H. If an adverse trend in groundwater quality is identified, further assessment and/or corrective action may be required. This may include an alteration to the permitted application rate or a cessation of manure application on the impacted area.

I. Spray application systems should be designed and operated in such a manner to prevent drift of liquid manure onto adjacent property.

200.120 Frequency of Monitoring for Animal Manure.

A. The producer shall be responsible for having representative samples of the animal manure collected and analyzed at least once per year and when the feed composition significantly changes. The constituents to be monitored shall be given in the permit. The analyses should be used to determine the amount of animal manure to be land applied. In order to ensure that the permitted application rate (normally the agronomic rate) is met, the application amount shall be determined using a rolling average of the previous analyses. The Department shall establish minimum requirements for the proper method of sampling and analyzing of animal manure. Facilities with permits that do not specify which constituents to monitor shall monitor for Ammonium-Nitrogen, Total Kjeldahl Nitrogen (TKN), Organic Nitrogen (Organic Nitrogen = TKN - Ammonium Nitrogen), P_2O_5 , and K_2O .

B. The Department may require nitrogen, potassium, phosphorus, the constituents listed in Table 1 and Table 2 of Section 200.100, and any other constituent contained in a permit to be monitored prior to each application.

C. Permittees do not have to analyze for any constituent that they can demonstrate to the satisfaction of the Department is not present in their animal manure.

D. All monitoring shall be done in accordance with collection procedures in Standard Methods for Analysis of Water and Wastewater or other Department guidelines. Analysis shall be conducted by a laboratory certified by the Department. This laboratory shall have and maintain certification for the constituents to be analyzed.

200.130 Dead Animal Disposal Requirements.

A. Dead animal disposal shall be as specified in the approved Animal Facility Management Plan. The Dead Animal Disposal Plan should include the following:

1. Primary Method for the handling and disposal of normal mortality at the facility.

2. Alternate Method for the handling and disposal of excessive mortality on the farm. The normal method of disposal may not be sufficient to handle an excessive mortality situation. Each producer should have an emergency or alternate method to dispose of excessive mortality. Excessive mortality burial sites shall be approved by the Department prior to utilization.

B. Burial.

1. Burial pits may be utilized for emergency conditions, when the primary method of disposal is not sufficient to handle excessive mortality.

2. Burial pits shall not be located in the 100-year floodplain.

3. Soil type shall be evaluated for leaching potential.

4. Burial pits shall not be located or utilized on sites that are in areas that may adversely impact surface or groundwater quality or further impact impaired water bodies.

5. The bottom of the burial pit may not be within 2 feet of the seasonal high groundwater level.

80 FINAL REGULATIONS

6. No burial site shall be allowed to flood with surface water.

7. Animals placed in a burial site shall be covered daily with sufficient cover (6 inches per day) to prohibit exhumation by feral animals.

8. When full, the burial site should be properly capped (minimum 2 feet) and grassed to prohibit erosion.

9. Proposed burial pit sites shall be approved by the Department. The Department may conduct a geologic review of the proposed site prior to approval.

10. The Department may require the producer to utilize another method of dead animal disposal if burial is not managed according to the Dead Animal Disposal Plan or repeated violations of these burial requirements occur or adverse impact to surface or groundwater is determined to exist.

11. The Department may require groundwater monitoring for dead animal burial pits on a case-by-case basis. The Department shall consider all of the facts including, but not limited to, the following: depth to the seasonal high water table; aquifer vulnerability; proximity to a State Approved Source Water Protection Area; groundwater use in the area; distance to adjacent surface waters; number of dead animals buried; and frequency of burial in the area.

C. Incinerators.

1. For animal facilities proposing an incinerator for dead animal disposal, either a permit for the air emissions shall be obtained from the Department's Bureau of Air Quality before the incinerator can be built or the following criteria shall be met in order to qualify for an exemption from an air permit:

a. The emission of particulate matter shall be less than one pound per hour at the maximum rated capacity;

b. The incinerator shall be a package incinerator and have a rated capacity of 500 pounds per hour or smaller which burns virgin fuel only; and

c. The incinerator shall not exceed an opacity limit of 10%.

2. Incinerators used for dead animal disposal shall be properly operated and maintained. Operation shall be as specified in the owner's manual provided with the incinerator. The owner's manual shall be kept on site and made available to Department personnel upon request.

3. The use of the incinerator to dispose of waste oil, hazardous, or any other waste chemical is prohibited. The use of the incinerator shall be limited to dead animal disposal only unless otherwise approved by the Department's Bureau of Air Quality.

D. Composters. Composters used for dead animal disposal shall be designed by a professional engineer or an NRCS representative and operated in accordance with the approved Animal Facility Management Plan.

E. Disposal of dead animals in a municipal solid waste landfill shall be in accordance with Regulation 61-107.258.

F. Disposal of animal carcasses or body parts into manure lagoons, manure treatment systems, manure storage ponds, waters of the State, ephemeral and intermittent streams, ditches, and swales is prohibited.

G. Other methods of dead animal disposal that are not addressed in this regulation may be proposed in the Dead Animal Disposal Plan.

200.140 Other Requirements.

A. There shall be no discharge of pollutants from the operation into surface waters of the State (including ephemeral and intermittent streams). There shall be no discharge of pollutants into groundwater, which could cause groundwater quality not to comply with the groundwater standards established in South Carolina Regulation 61-68.

B. On a case-by-case basis, the Department may impose additional or more stringent requirements for the management, handling, treatment, storage, or utilization of animal manure and other animal by-products.

C. The following cases shall be evaluated for additional or more stringent requirements:

1. Source water protection. Facilities and manure utilization areas located within a state approved source water protection area.

2. 303(d) Impaired Waterbodies List. Facilities and manure utilization areas located upstream of an impaired waterbody.

3. Proximity to Outstanding Resource Waters, trout waters, shellfish waters, or potential to adversely affect a federally listed endangered or threatened species, its habitat, or a proposed or designated critical habitat.

4. Aquifer Vulnerability Area, an area where groundwater recharge may affect an aquifer.

D. If an adverse impact to the waters of the State (including ephemeral and intermittent streams and groundwater) from animal manure and other animal by-products handling, storage, treatment, or utilization practices are documented, through monitoring levels exceeding the standards set forth in Regulation 61-68 or a significant adverse trend occurs, the Department may require the producer responsible for the animal manure and other animal by-products to conduct an investigation to determine the extent of impact. The Department may require the producer to remediate the water to within acceptable levels as set forth in Regulation 61-68.

E. No manure may be released from the premises of an animal facility to waters of the State (including ephemeral and intermittent streams) unless a permit pursuant to Section 402 or 404 of the CWA has been issued by the Department.

F. Animal medical waste cannot be disposed into animal lagoons, treatment systems, or manure storage ponds or land applied with animal manure and other animal by-products.

G. In the event of a discharge from an animal facility or an animal lagoon, treatment system, or manure storage pond, the owner or operator is required to notify the Department immediately, within 24 hours of the discharge.

H. When the Department determines that a nuisance exists at an animal facility, the permittee shall take action to correct the nuisance to the degree and within the time frame designated by the Department.

I. Permittees shall maintain all-weather access roads to their facilities at all times.

J. The body of vehicles transporting manure shall be wholly enclosed and while in transit, be kept covered with a canvas cover provided with eyelets and rope tie-downs, or any other approved method which shall prevent blowing or spillage of loose material or liquids. Should any spillage occur during the transportation of the manure, the owner/operator shall take immediate steps to clean up the manure.

82 FINAL REGULATIONS

200.150 Odor Control Requirements.

A. The Animal Facility Management Plan shall contain an odor abatement plan for the animal facility, lagoon, treatment system, manure storage pond, and manure utilization areas, which may consist of the following:

1. Operation and maintenance practices which are used to eliminate or minimize undesirable odor levels in the form of a Best Management Plan for Odor Control;
2. Use of treatment processes for the reduction of undesirable odor levels;
3. Additional setbacks from property lines beyond the minimum setbacks given in this part;
4. Other methods as may be appropriate; or
5. Any combination of these methods.

B. Producers shall utilize Best Management Practices normally associated with the proper operation and maintenance of an animal facility, lagoon, treatment system, manure storage pond, and any manure utilization area to ensure an undesirable level of odor does not exist.

C. No producer may cause, allow, or permit emission into the ambient air of any substance or combination of substances in quantities that an undesirable level of odor is determined to result unless preventive measures of the type set out below are taken to abate or control the emission to the satisfaction of the Department. When an odor problem comes to the attention of the Department through field surveillance or specific complaints, the Department shall determine if the odor is at an undesirable level.

D. After determining an undesirable level of odor exists, the Department shall require remediation of the undesirable level of odor.

E. The Department may require these abatement or control practices, including, but not limited to the following:

1. Remove or dispose of odorous materials;
2. Methods in handling and storage of odorous materials that minimize emissions;
 - a. Dry manure to a moisture content of 50% or less;
 - b. Use disinfection to kill microorganisms present in manure;
 - c. Aerate manure;
 - d. Compost solid manure and other animal by-products;
 - e. Utilize Odor Control Additives.
3. Prescribed standards in the maintenance of premises to reduce odorous emissions;
 - a. Filtration (biofilters or other filter used to remove dust and odor) of ventilation air;
 - b. Keep animals clean or separate from manure;

- c. Adjust number of animals confined in the pens or paddocks in accordance with Clemson University Animal Space Guidelines.
- d. Increase the frequency of manure removal from animal houses;
- e. Keep feeding areas dry, and minimize waste feed accumulation;
- f. Maintain feedlot surfaces in a dry condition (25%-40% moisture content), with effective dust control;
- g. Maintain the dead animal disposal system;
- h. Cover or reduce the surface area of manure and other animal by-products storage. (Vents shall be provided for the release of pressure created by manure gases if completely sealed covers are used);
- i. Plant trees around or downwind of the manure and other animal by-products storage and treatment facilities;
- j. Incorporate manure and other animal by-products immediately after land application;
- k. Select appropriate times for land application.

4. Best Available Technology to reduce odorous emissions.

F. If the permittee fails to control or abate the odor problems at a land application site to the satisfaction and within a time frame determined by the Department, approval for land application of manure on the manure utilization area in question may be revoked. Additional land may be required to be added to the Animal Facility Management Plan, if necessary to provide a sufficient amount of land for manure utilization.

200.160 Vector Control Requirements

A. Vector Abatement Plan. The Vector Abatement Plan shall at a minimum consist of the following:

1. Normal management practices used at the animal facility, lagoon, treatment system, manure storage pond, and manure utilization areas to ensure there is no accumulation of organic or inorganic materials to the extent and in such a manner as to create a harborage for rodents or other vectors that may be dangerous to public health.

2. A list of specific actions to be taken by the producer if vectors are identified as a problem at the animal facility, lagoon, treatment system, manure storage pond, or any manure utilization area. These actions should be listed for each vector problem, e.g., actions to be taken for fly problems, actions to be taken for rodent problems, etc.

B. No producer may cause, allow, or permit vectors to breed or accumulate in quantities that result in a nuisance level, as determined by the Department.

C. The Department shall require remediation of the problem to the satisfaction of the Department, after determining a vector problem exists.

D. The Department may require abatement or control practices, including, but not limited to the following:

84 FINAL REGULATIONS

1. Remove and properly dispose of vector infested materials;
2. Methods in handling and storage of materials that minimize vector attraction;
 - a. Remove spilled or spoiled feed from the house as soon as practicably possible not to exceed 48 hours, unless otherwise approved by the Department;
 - b. Remove and properly dispose of dead animals as soon as practicably possible not to exceed 24 hours, unless otherwise approved by the Department;
 - c. Increase the frequency of manure removal from animal houses;
 - d. Prevent solids buildup in the pit storage or on the floors or walkways;
 - e. Remove excess manure packs along walls and curtains;
 - f. Compost solid manure and other animal by-products;
 - g. Appropriately use vector control chemicals, poisons or insecticides (take caution to prevent insecticide resistance problems);
 - h. Utilize traps, or electrically charged devices;
 - i. Utilize biological agents;
 - j. Utilize Integrated Pest Management;
 - k. Incorporate manure and other animal by-products immediately after land application.
3. Prescribed standards in the maintenance of premises to reduce vector attraction;
 - a. Remove any standing water that may be a breeding area for vectors;
 - b. Keep animals clean or separated from manure;
 - c. Keep facility clean and free from trash or debris;
 - d. Properly utilize and service bait stations;
 - e. Keep feeding areas dry, and minimize waste feed accumulation;
 - f. Keep grass and weeds mowed around the facility and manure storage or treatment areas;
 - g. Properly maintain the dead animal disposal system;
 - h. Cover or reduce the surface area of manure and other animal by-products storage. (Vents shall be provided for release of pressure created by manure gases if completely sealed covers are used);
 - i. Properly store feed and feed supplements;
 - j. Conduct a weekly vector monitoring program;
 - k. Be aware of insecticide resistance problems, and rotate use of different insecticides;

- l. Prevent and repair leaks in waterers, water troughs or cups;
 - m. Provide grading and drainage around the buildings to prevent rain water from entering the buildings or ponding around the buildings.
4. Utilize the best available control technology to reduce vector attraction and breeding.

200.170 Record Keeping.

A. A copy of the approved Animal Facility Management Plan, including approved updates, and a copy of the permit(s) issued to the producer shall be retained by the permittee for as long as the animal facility is in operation.

B. All application information submitted to the Department shall be retained by the permittee for eight years. However, if the facility was permitted prior to June 26, 1998, and the permittee has previously discarded these documents since there was no requirement to maintain records at that time, this requirement shall not apply.

C. Records shall be developed for each manure utilization area. These records shall be kept for eight years. The records shall include the following:

- 1. For each time animal manure and other animal by-products are applied to the site, the amount of animal manure and other animal by-products applied (in gallons per acre or pounds per acre, as appropriate), the date and time of application, and the location of application.

- 2. All sampling results for animal manure that is land applied;

- 3. All soil monitoring results;

- 4. All groundwater monitoring results, if applicable; and

- 5. Crops grown.

D. Records for the facility to include the following:

- 1. Monthly animal count; and

- 2. Mortality count and method of disposal.

E. Records for lagoon or manure storage pond operations to include the following:

- 1. Monthly water levels of the lagoon and manure storage pond; and

- 2. All groundwater monitoring results, if applicable.

F. All records retained by the producer shall be kept at either the facility, an appropriate business office, or other location as approved by the Department.

G. All records retained by the producer shall be made available to the Department during normal business hours for review and copying, upon request by the Department.

200.180 Reporting.

86 FINAL REGULATIONS

A. Large animal facilities (greater than 500,000 pounds normal production live weight) are required to submit an annual report, on a form approved by the Department. The Department may establish reporting requirements in permits as it deems appropriate. These reporting requirements may include the following:

1. All manure sampling results for the last year and the latest rolling average concentration for the land limiting constituent;
2. All soil monitoring results;
3. All groundwater monitoring results, if applicable;
4. Calculated (permitted application rate) application rates for all manure utilization areas; and
5. The adjusted application rates, if applicable, based on the most recent animal manure sampling, soil samples, and crop yield(s). The application rate change could also be due to a change in field use, crop grown or other factors.

B. The Department may require small animal facilities (500,000 pounds or less of normal production live weight) to submit annual reports on a case-by-case basis.

C. The Department may establish permit conditions to require a facility to complete and submit a comprehensive report every five years. The Department shall review this report to confirm that the permitted nutrient application rates have not been exceeded. Based on the results of the review, additional soil and/or groundwater monitoring requirements, permit modification, and/or corrective action may be required.

200.190 Training Requirements.

A. An operator of an animal facility or manure utilization area shall attend a training program on the operation of animal manure management under the program created by Clemson University.

B. Operators of new animal facilities and large animal facilities (greater than 500,000 pounds normal production live weight) shall be required to obtain certification under the program created by Clemson University. The Department may also require existing operators with documented violations to obtain certification under Clemson's program.

C. The training and certification program shall be completed by operators of new facilities within one year of the effective date of the issued permit.

D. The training and/or certification program shall be completed by operators of existing facilities within two years of the effective date of this regulation.

E. Training and/or certification shall be maintained as long as the facility remains in operation.

F. Failure to obtain the training and/or certification as provided in this Section shall be deemed a violation of this Regulation.

200.200 Violations.

A. Persons who violate this regulation or any permit issued under this regulation are subject to the penalties in Sections 48-1-320 (Criminal Penalties) and 48-1-330 (Civil Penalties) of the South Carolina Pollution Control Act.

B. Any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required by the Department to be maintained as a condition in a permit, or who alters or falsifies the results obtained by such devices or methods, shall be deemed to have violated a permit condition and shall be subject to the penalties provided for pursuant to 48-1-320 and 48-1-330 of the Code.

PART 300 Innovative and Alternative Technologies.

- 300.10 General.
- 300.20 Submittal Requirements.
- 300.30 Requirements in Lieu of Requirements Under Part 100 and Part 200.
- 300.40 Innovative and Alternative Treatment Technologies.
- 300.50 Exceptional Quality Compost.
- 300.60 Public Notice Requirements.

300.10 General.

A. The Department supports and encourages the use of appropriate innovative and alternative technologies.

B. When innovative or alternative technology is proposed for an agricultural facility for manure and other animal by-products handling, treatment, storage, processing, or utilization, a meeting should be held with the Department prior to the submittal of the project. The purpose of the meeting is for the applicant and the Department to go over the proposed project and the purpose and expected benefits from the use of the innovative or alternative technology.

300.20 Submittal Requirements.

A. When innovative or alternative technology is proposed for an agricultural facility for manure and other animal by-products handling, storage, treatment, processing, or utilization, the applicant shall provide to the Department the submittal information contained in Sections 100.50 or 200.50, as appropriate, and a detailed project report which explains the innovative or alternative technology and the purpose and expected benefits of the proposal.

300.30 Requirements in Lieu of Requirements Under Part 100 or Part 200 of This Regulation.

A. When the Department determines that appropriate alternative or innovative technology is being proposed, the specific requirements given in Part 100 and 200 of this regulation which deal with the purpose or expected benefits of the technology may not have to be met except when required by a specific statute or the Department after review of the project. Requirements in Part 100 that apply to large swine facilities with 1,000,000 pounds or more normal production live weight shall not be reduced or waived.

B. The Department shall review the project and determine the purpose or benefits of the proposed innovative or alternative technology and determine which requirements under Part 100 or 200 do not have to be met and the appropriate requirements to be used in lieu of the requirements in Part 100 or 200.

C. When an alternative or innovative technology is proposed, the review criteria shall be established on a case-by-case basis by the Department when the project is received.

D. When alternative or innovative technology is utilized at an animal facility, the setbacks given in Part 100 or 200 may be reduced by the Department as appropriate. Requirements in Part 100 that apply to large swine facilities with 1,000,000 pounds or more normal production live weight shall not be reduced or waived.

300.40 Innovative and Alternative Treatment Technologies.

88 FINAL REGULATIONS

A. The following is a list of innovative or alternative technologies for agricultural facilities to consider. This list is not exhaustive. Other processes exist and new technologies are being developed.

1. Aerobic treatment systems or combination aerobic/anaerobic systems;
2. Artificial (constructed) wetlands use for treatment;
3. Use of steel tanks;
4. Use of solid separators;
5. Methane Gas Recovery Systems;
6. Surface Water Discharge Systems;
7. Composting manure solids;
8. Bioreactors;
9. Covered liquid or slurry manure storage;
10. Air Scrubbers;
11. Ozonation;
12. Alternative Fuels.

B. At a minimum, the preparer of the agricultural Animal Facility Management Plan should consider the technologies given in 300.40.A for use at a proposed agricultural facility when the Animal Facility Management Plan is being developed.

C. When odors exist or are reasonably expected to exist at an undesirable level, the Department may require the use of appropriate innovative or alternative treatment technology to eliminate the odors or the potential for odors.

D. When the Department determines under Section 100.70.G. (Permit Decision Making Process) that there is reasonable potential for cumulative or secondary impacts due to methane gas from facilities, the Department may require the use of methane gas recovery systems or other appropriate technology to eliminate the potential impacts.

300.50 Exceptional Quality Compost.

A. When the Department determines that the composting of solid animal manure and other animal by-products is performed in such a manner that the odor and vector attraction potential is reduced and the controlled microbial degradation of the organic manure and other animal by-products has been accomplished, this material may be considered exceptional quality compost. Exceptional quality compost may be sold or distributed without regulation by the Department, if it meets the requirements of this part. The Department shall review and approve the composter design and proposal for operation and distribution of the composted product. Composting systems shall be designed by a professional engineer or an engineer with the Natural Resources Conservation Service.

B. Composting can be subject to nuisance problems such as odors, dusts and vector attraction. Therefore, the composting facility shall incorporate measures to control such conditions. An Odor and Vector Abatement Plan shall be developed for a composting facility.

C. Compost Product Quality Standards.

1. Product Standards are necessary to protect public and environmental health and to ensure a measure of commercial acceptability.

a. Based on EPA standards for pathogen reduction, the time/temperature conditions required are equivalent to an average of 128 F (53 C) for 5 consecutive days, 131 F (55 C) for 2.6 consecutive days, or 158 F (70 C) for 30 minutes.

b. The composted product shall meet or exceed the minimum standard of mature or very mature compost as set forth in the USDA Test Methods for the Examination of Composting and Compost (TMECC) Section 05.02-G CQCC Maturity Index. A maturity rating shall be given based upon the Maturity Assessment Matrix given in this method.

c. When land applied, the compost shall adhere to requirements for constituent concentrations and loading rates as outlined in Part 100.100, Part 200.100, or Part 400.60.

2. Compost products which meet these standards and also comply with pathogen quality and vector attraction standards are considered to be of exceptional quality and can be used without regulatory oversight, other than the compliance of agronomic application rates based on product analysis.

3. If the Department determines that the composting system is not being operated properly or that the composted product is not of an Exceptional Quality, the composted product shall be handled in accordance with the land application requirements of Part 100, 200 or 400 (as applicable) of these regulations.

4. An operable thermometer capable of measuring temperatures within a compost pile shall be kept at the composting facility for monitoring the temperature of each compost pile or batch. A written log of the daily temperature reading should be kept for each batch of compost. Temperatures shall not be allowed to rise above 180 F (82 C), which may cause combustion in the compost pile and start a fire.

5. The composted product shall be analyzed by Clemson University or another Department approved laboratory. The composted product content information along with recommended application rates shall be distributed with the product. The consumer shall be advised that the composted product shall be applied at an agronomic rate.

300.60 Public Notice Requirements.

A. When the Department permits an alternative or innovative technology, the notice on the issuance of the permit required under Sections 100.60.H. or 200.60.H. shall contain a general description of the innovative or alternative process and a summary of the expected benefits.

Part 400 - Manure Broker Operations.

400.10 Purpose and Applicability.

400.20 Permits and Compliance Period.

400.30 Relationship to Other Regulations.

400.40 Permit Application Requirements (Broker Management Plan Submission Requirements).

400.50 Permit Decision Making Process.

400.60 Manure Utilization Area Requirements.

400.70 Other Requirements.

400.80 Odor Control Requirements.

90 FINAL REGULATIONS

- 400.90 Record Keeping.
- 400.100 Reporting.
- 400.110 Training Requirements.
- 400.120 Violations.

400.10 Purpose and Applicability.

A. Purpose.

1. To protect the environment and the health and welfare of citizens of the State from pollutants generated by the processing, treatment and land application of dry animal manure and other animal by-products.
2. To establish standards, which consist of general requirements, constituent limits, management practices, and operational standards, for the use of dry animal manure and other animal by-products generated at animal facilities. Standards are included in this part for dry animal manure and other animal by-products applied to the land.
3. To establish standards for the frequency of monitoring and record keeping requirements for brokers who operate dry animal manure and other animal by-products handling businesses.
4. To establish standards for the proper operation and maintenance of dry animal manure and other animal by-products treatment and storage facilities associated with manure brokering operations.
5. To establish criteria for dry animal manure and other animal by-products storage facilities and manure utilization areas location as they relate to protection of the environment and public health. The location of dry animal manure and other animal by-products storage facilities and manure utilization areas as they relate to zoning in an area is not covered in this regulation. Local county or municipal governments may have zoning requirements and these regulations neither interfere with nor restrict such zoning requirements. Permit applicants should contact local municipal and county authorities to determine any local requirements that may be applicable.

B. Applicability.

1. This part applies to:
 - a. All new and expanding dry manure brokering operations;
 - b. All dry animal manure and other animal by-products treatment or storage facilities operated by brokers; and
 - c. Permanent manure utilization areas added to a manure broker management plan.
2. This part applies to all dry animal manure and other animal by-products taken, bought, given or sold by a manure broker.
3. This part applies to all land where dry animal manure and other animal by-products bought, given, taken or sold by a manure broker is applied.
4. This part applies to out-of-state and in-state based manure brokers who accept manure and other animal by-products from agricultural animal facilities located in the State.
5. This part applies to all manure brokers who bring animal manure and other animal by-products from other states into the state of South Carolina.

6. Part 200.80 C. (Dry Animal manure and other animal by-products Treatment and Storage Facility Siting Requirements) of this regulation applies to dry animal manure and other animal by-products treatment or storage facilities proposed by brokers.

7. If a manure broker proposes to handle, process, treat, or store liquid animal manure as a part of the operation, the requirements of this part shall be met, at a minimum. However, the Department may require that the applicant meet additional requirements applicable to liquid manure that are included in Part 100 and Part 200.

8. Existing brokers that hold a valid permit from the Department are deemed permitted under this regulation, and do not need to apply for a new permit. The deemed permitted brokers shall meet all the requirements of this part.

400.20 Permits and Compliance Period.

A. **Permit Requirement.** Animal manure and other animal by-products from an animal facility with dry manure handling can only be handled, stored, treated, processed, or land applied in the State in accordance with a permit issued by the Department. The handling, storage, treatment, and final utilization of animal manure and other animal by-products from a manure broker operation shall be permitted under the provisions of this part before the broker can operate in the State.

B. **Notification Requirements.** The permittee shall notify the Department in writing and receive written Departmental approval, prior to any change in operational procedures in a permitted broker operation, including, but not limited to, the following:

1. Change in operations or in manure and other animal by-products treatment, handling, or utilization;
2. Change in contracts routinely used in manure and other animal by-products transfers; or
3. Termination of operations.

400.30 Relationship to Other Regulations. The following regulations are referenced throughout this part and may apply to facilities covered under this regulation.

- A. Nuisances are addressed in Regulation 61-46.
- B. Application and annual operating fees are addressed in Regulation 61-30.
- C. The proper closeouts of wastewater treatment facilities are addressed in Regulation 61-82. This regulation includes animal manure treatment lagoons and manure storage ponds.
- D. Permitting requirements for concentrated animal feeding operations as defined by Regulation 61-9 are contained in Regulation 61-9.
- E. Setbacks and construction specifications for potable water wells and Monitoring wells shall be in accordance with Regulation 61-71.
- F. Permits for air emissions from incinerators are contained in Regulation 61-62.
- G. Disposal of animal manure in a municipal solid waste landfill unit is addressed in Regulation 61-107.258.
- H. Disposal of animal manure with domestic or industrial sludge is addressed in Regulation 61-9.

92 FINAL REGULATIONS

I. Procedures for contested cases are addressed in Regulation 61-72 and the Rules of the State's Administrative Law Judge Division.

J. Laboratory Certification is addressed in Regulation 61-81.

K. Water Classifications and Standards are addressed in Regulation 61-68.

400.40 Permit Application Procedures (Broker Management Plan Submission Requirements).

A. A broker who proposes to operate a dry animal manure brokering operation or expand an existing operation shall make application for a permit under this part using an application form as designated by the Department. The following information shall be included in the application package.

1. A completed application form.

2. A Broker Management Plan prepared by qualified Natural Resources Conservation Service personnel, a SC registered professional engineer, or other qualified individuals, such as soil scientists. The Comprehensive Nutrient Management Plan shall at a minimum contain:

a. Brokering Operation name, address, telephone number, county, and permit number (if applicable);

b. Applicant's name, address, and telephone number (if different from above);

c. Broker's name;

d. Dry Animal manure and other animal by-products Storage or Treatment Facility Information (if applicable):

i. Description of animal manure and other animal by-products storage and storage capacity;

ii. Description of animal manure and other animal by-products treatment (if any);

iii. Facility location description and the zoning or land use restrictions in this area (this information should be obtained from the county). Facility shall meet the siting requirements outlined in Section 200.80.C of this regulation;

e. Animal manure and other animal by-products handling and application information shall be included as follows:

i. A general crop management plan which includes the optimum time of year of the animal manure and other animal by-products application and how it relates to crop type, crop planting, and harvesting schedule (if applicable) in general for manure utilization areas in the State. This information should be used as a guide in the absence of more accurate information. The Plan Preparer may need to include this information for the different regional areas of The State, as necessary, to provide the broker with general crop information for the entire State;

ii. Type of equipment used to transport and/or spread the animal manure and other animal by-products (if applicable);

iii. Description of services provided by the broker (clean-out houses, transport manure and other animal by-products, drop-off only, land application, incorporation of manure and other animal by-products into

field, stacking or storing manure and other animal by-products, manure and other animal by-products treatment, etc.);

iv. Example of the contract or letter of intent to buy or accept animal manure and other animal by-products between the broker and the producer who is supplying the animal manure and other animal by-products; and

v. Example of the manure transfer contract to be used for the transfer of animal manure and other animal by-products between the broker and the person(s) who is accepting or purchasing the animal manure and other animal by-products. The Department has developed a Manure transfer contract that can be used or the broker may develop his own contract as long as it contains the minimum information outlined in part 400.60.B.12.

3. The Broker Management Plan shall contain an odor abatement plan for the dry animal manure and other animal by-products storage or treatment facility or manure utilization areas, as appropriate.

4. A Vector Abatement Plan shall be developed for the dry animal manure and other animal by-products storage or treatment facility or land application areas, (if applicable).

5. Soil Monitoring Plan. A soil monitoring plan shall be developed for all broker operations.

6. Plans and specifications for the construction and operation of all manure and other animal by-products treatment or storage structures, such as composters or manure storage sheds that are to be owned and operated by the brokering operation.

7. Adjoining property owners written agreement for reduction of setbacks for any manure storage and/or treatment facilities (if applicable).

8. Application fee and first year's operating fee as established by Regulation 61-30.

B. The Department may request an applicant to provide any additional information deemed necessary to complete or correct deficiencies in the broker operation permit application prior to processing the application or issuing, modifying, or denying a permit.

C. Applicants shall submit all required information in a format acceptable to the Department.

D. Incomplete submittal packages may be returned to the applicant by the Department. An application package for a permit is complete when the Department receives all of the required information, which has been completed to its satisfaction.

E. Application packages for permit modifications only need to contain the information applicable to the requested modification.

400.50 Permit Decision Making Process

A. No permit shall be issued before the Department receives a complete application for a permit.

B. After the Department has received a complete application package, a technical review shall be conducted by the Department. The Department may request any additional information or clarification from the applicant or the preparer of the Broker Management Plan to help with the determination on whether a permit should be issued or denied. If a permit application package meets all applicable requirements of this part, a permit may be issued.

94 FINAL REGULATIONS

C. A site inspection of any proposed sites for dry animal manure and other animal by-products storage or treatment facilities shall be made by the Department before a permit decision is made.

D. For permit issuances, the Department, at the expense of the applicant, shall publish a notice of issuance of a permit to operate a dry animal manure brokering operation in a local newspaper of general circulation in the area of the broker's base of operations.

E. For permit denials, the Department shall give the permit applicant a written explanation, which outlines the specific reasons for the permit denial.

F. The appeal of a permit decision is governed by the SC Administrative Procedures Act, Regulation 61-72, and the Rules of the State's Administrative Law Judge Division.

G. When a permit is issued, it shall contain an issue date and an effective date. The effective date shall be at least twenty (20) days after the issue date to allow for any appeals. If a timely appeal is not received, the permit is effective.

H. Permits issued under this part for broker operations shall be renewed at least every five years. However, subsequent to the issuance of a permit, if the broker operation is not in operation or production for two consecutive years, the permit is no longer valid and a new permit shall be obtained. If the Broker does not apply for permit renewal or does not fulfill the requirements of the permit renewal, the permit is terminated.

I. An expired broker operation permit which was issued under this part continues in effect until a new permit is effective only if the permittee submits a complete application, to the satisfaction of the Department, at least 120 days before the existing permit expires. The Department may grant permission to submit an application later than the deadline for submission stated above, but no later than the permit expiration date. If the facility has been closed for any two consecutive years since the last permit was issued, the provision for the expiring permit remaining in effect does not apply since the permit is no longer valid. Permittees shall notify the Department in writing when they go out of business.

J. The Department shall review all broker operation records for permit renewal at the time of application. The Department may require that routine application sites are added to the broker management plan. These manure utilization areas that are added to the broker management plan shall meet all the requirements for manure utilization areas included in Part 200 of these regulations.

K. The brokering operation can only be built (if a manure storage or treatment facility was included) or operated when the permit is effective with no appeals pending. The dry animal manure and other animal by-products treatment or storage facility cannot be placed into operation until the Department grants written authorization to begin operations.

L. For manure brokers who do not have any constructed facilities associated with their operations, the Department shall issue a permit to operate with an effective date. Once this permit is effective, with no appeals pending, the broker may begin operations. No additional written authorization from the Department shall be required.

M. For manure brokers who are permitted to construct a storage or treatment facility associated with the brokering operation, authorization to begin operations shall be obtained prior to operation. To receive authorization to begin operations, the broker shall have the preparer of the Broker Management Plan submit to the Department written certification that the construction of the dry animal manure and other animal by-products treatment or storage facility has been completed in accordance with the approved Broker Management Plan and the requirements of this regulation.

N. The Department may conduct a final inspection of any dry animal manure and other animal by-products treatment or storage facilities before granting authorization to a broker to begin operations (if applicable).

O. The Department shall grant written authorization for the broker to begin operations of the dry animal manure and other animal by-products treatment or storage facility after it has received the certification statement in 400.50.M and the results of the final inspection, if conducted, are satisfactory.

400.60 Manure Utilization Area Requirements

A. Application Rates. The Department shall approve a Broker Management Plan that establishes application rates based upon the limiting constituent (a nutrient or other constituent as given in item 400.60.B). The limiting constituent shall be Nitrogen, unless the soil test results exceed the limits for phosphorus. More information on maximum allowable constituent concentrations are outlined in item 400.60.B and item 400.60.C.

B. Constituent Limits for Land Application of Dry Animal manure and other animal by-products and Operational Practices for Land Application.

1. Dry animal manure and other animal by-products. When the animal manure analysis indicates there are high levels of arsenic, copper, zinc, or other constituent of concern, the producer shall comply with the following criteria:

a. Constituent Limits. If animal manure and other animal by-products subject to a constituent limit is applied to land, either:

i. The cumulative loading rate for each constituent shall not exceed the loading rate in Table 1 of Section 400.60; or

ii. The concentration of each constituent in the animal manure and other animal by-products shall not exceed the concentration in Table 2 of Section 400.60.

b. Constituent concentrations and loading rates - animal manure and other animal by-products.

i. Cumulative constituent loading rates.

TABLE 1 OF SECTION 400.60 - CUMULATIVE CONSTITUENT LOADING RATES

| Cumulative Constituent Loading Rate | | |
|-------------------------------------|-------------------------|-------------------|
| Constituent | (kilograms per hectare) | (pounds per acre) |
| Arsenic | 41 | 37 |
| Copper | 1500 | 1339 |
| Zinc | 2800 | 2499 |

ii. Constituent concentrations.

TABLE 2 OF SECTION 400.60 - CONSTITUENT CONCENTRATIONS

| Monthly Average Concentrations | |
|--------------------------------|--|
| Constituent | Dry weight basis (milligrams per kilogram) |

96 FINAL REGULATIONS

| | |
|---------|------|
| Arsenic | 41 |
| Copper | 1500 |
| Zinc | 2800 |

iii. Annual constituent loading rates.

TABLE 3 OF SECTION 400.60 - ANNUAL CONSTITUENT LOADING RATES

Annual Constituent Loading Rate

| Constituent | (kilograms per hectare per 365-day period) | (pounds per acre per 365-day period) |
|-------------|--|--------------------------------------|
| Arsenic | 2.0 | 1.8 |
| Copper | 75 | 67 |
| Zinc | 140 | 125 |

c. Additional constituent limits may be required, from the application information or subsequent monitoring in a permit thereafter, but such needs shall be assessed on an individual project basis.

d. No person shall apply animal manure and other animal by-products to land if any of the loading rates in Table 1 of Section 400.60.B.1 have been reached.

e. No person shall apply animal manure and other animal by-products to land during a 365-day period after the annual application rate in Table 3 of Section 400.60.B.1 has been reached.

f. If animal manure and other animal by-products have not been applied to the site, the cumulative amount for each constituent listed in Table 2 of Section 400.60.B.1 may be applied to the site in accordance with Section 400.60.B.1.a.i (cumulative loading rate shall not exceed the cumulative constituent loading rate).

g. If animal manure and other animal by-products have been applied to the site and the cumulative amount of each constituent applied to the site in the animal manure and other animal by-products is known, the cumulative amount of each constituent applied to the site shall be used to determine the additional amount of each constituent that can be applied to the site in accordance with Section 400.60.B.1.a.i (cumulative loading rate shall not exceed the cumulative constituent loading rate).

h. Manure application shall not exceed the agronomic rate of application for plant available nitrogen (PAN) for the intended crop(s) on an annual basis. For those years that fertilizer is land applied, manures in combination with the fertilizer shall not exceed the agronomic rate of nutrient utilization of the intended crop(s).

2. Any person who land applies animal manure and other animal by-products shall ensure that the applicable requirements in this part are met when the animal manure and other animal by-products are applied to the land.

C. Requirements for the land application of animal manure and other animal by-products.

1. Animal manure and other animal by-products shall not be applied to land that is saturated from recent precipitation, flooded, frozen, or snow-covered. Animal manure and other animal by-products shall not be applied during inclement weather, or when a significant rain event is forecasted to occur within 48 hours.

2. Animal manure and other animal by-products shall not be placed directly in groundwater.

3. Animal manure shall not be applied to cropland more than 30 days before planting or during dormant periods for perennial species, unless otherwise approved by the Department in an emergency situation.

4. The land application equipment, when used once or more per year, shall be calibrated at least annually by the person who land applies animal manure; more frequent calibrations may be required in a permit to ensure

that proper application rates are being attained. If the land application equipment has not been used in over a year, the equipment shall be calibrated prior to use.

5. If the broker chooses to offer manure analysis as a service, the manure shall be analyzed at least once per year. If the broker does not perform manure analysis, the animal producer shall provide the broker with a copy of the most recent manure analysis. Dry animal manure information (as appropriate) shall be included as follows:

a. Dry animal manure shall be analyzed for the following:

i. Nutrients (on a dry weight basis).

(a) Total Kjeldahl Nitrogen (mg/kg).

(b) Total inorganic nitrogen (mg/kg).

(c) Total ammonia nitrogen (mg/kg) and Total nitrate, nitrogen (mg/kg).

(d) P₂O₅ (mg/kg).

(e) K₂O (mg/kg).

(f) Calcium Carbonate equivalency (if animal manure is alkaline stabilized).

ii. Constituents (on a dry weight basis).

(a) Arsenic (mg/kg).

(b) Copper (mg/kg).

(c) Zinc (mg/kg).

b. Name, address, and telephone number of the laboratory conducting the analyses.

c. Analysis shall be conducted by a laboratory certified by the Department. This laboratory shall have and maintain certification for the constituents to be analyzed.

6. Permittees do not have to analyze for any constituent that they can demonstrate to the satisfaction of the Department is not present in their manure.

7. No person(s) accepting or purchasing manure or other animal by-products from a manure broker shall apply animal manure and other animal by-products to the land except in accordance with the requirements in this part. The broker shall inform the recipient of their responsibility to properly manage the land application of manure to prevent discharge of pollutants to waters of the State (including ephemeral and intermittent streams).

8. An animal producer who supplies animal manure to a broker shall provide the broker with the concentration of plant available nitrogen, phosphorus, potassium and the concentration of all other constituents listed in the permit. Unless the broker is providing an additional service of performing the manure analysis, which shall be agreed upon up-front in the manure transfer contract.

98 FINAL REGULATIONS

9. Animal manure and other animal by-products shall not be applied to or discharged onto a land surface when the vertical separation between the manure and other animal by-products and the seasonal water table is less than 1.5 feet at the time of application. For special cases, no land application can occur when the vertical separation from the ground surface to the water table is less than 1.5 feet at the time of application unless a situation is deemed an emergency with departmental concurrence.

10. Soil sampling (6-8 inches depth) shall be conducted for each field prior to manure application to determine the appropriate application rate. Each field should be sampled once per year. If manure application frequency will be less than once per year, at least one soil sample should be taken prior to returning to that field for land application again. This sample shall not be more than one year old. This information shall be obtained from person(s) accepting dry animal manure and other animal by-products prior to the delivery or land application of animal manure and other animal by-products by the broker. Soil phosphorus shall be addressed according to NRCS-CPS in the broker management plan. The Department may require additional limits on soil phosphorus in the permit conditions. Additional soil sampling may be required by the Department on a case-by-case basis to ensure there is no potential for groundwater contamination.

11. The permittee shall obtain information needed to comply with the requirements in this part.

12. A Manure Transfer Contract shall be developed for the Broker to use with any person who is accepting manure in quantities greater than twelve (12) tons per recipient per year. The contract should contain, at a minimum, the following information:

a. Name, address, county and telephone number of the person who is purchasing or accepting animal manure and other animal by-products;

b. Manure nutrient composition (pounds per ton of Plant Available Nitrogen, Phosphorus, and Potassium) to be filled in or provided by the broker. This information shall be obtained from the manure analysis results and the broker shall provide this information on the manure transfer contract;

c. Land Application Field Information:

i. Physical Description (acreage, crop, soil type);

ii. Soil Test Results (Phosphorus, Zinc, and Copper in pounds/acre); and

iii. Recommended Application Rates (Nitrogen, Phosphorus, and Potassium in pounds per acre as reported on a soil test).

d. Attach a copy of a soils map, topographic map, county tax map, plat, FSA map, OR a site plan sketch which includes the following information:

i. Manure application area with setbacks outlined;

ii. Known water supply wells within 100 feet of the property line;

iii. Adjacent surface waters, including ditches, streams, creeks and ponds; and

iv. Identification of roads and highways to indicate location.

e. Description of application equipment and name of person to land apply manure;

- f. Signed agreement that informs the land owner that he is responsible and liable for land applying the animal manure and other animal by-products in accordance with these regulations; and
- g. A copy of the land application requirements shall be provided to the recipient of the manure.

13. All persons who routinely accept manure and other animal by-products, in quantities greater than twelve tons per recipient per year, from a broker shall be listed in the approved Broker Management Plan at the time of permit renewal. The Broker Management Plan shall include the appropriate manure utilization area information for the sites routinely used by other persons. The person accepting the manure may be required by the Department to have a Management Plan and a permit for their manure utilization areas.

14. Dead animals shall be removed from dry manure prior to land application. The livestock producer is responsible for removing all dead animals from the manure prior to transfer. Manure brokers may not accept manure that contains dead animals, unless the broker plans to separate out the dead animals and handle the dead animals in accordance with a dead animal disposal plan approved by the Department.

15. When the Department receives nuisance complaints on a land application site, the Department may restrict land application of animal manure on the site completely or during certain time periods.

16. The Department may require manure, spread on cropland, to be disked in immediately.

17. Manure (solid or liquid) shall only be applied when weather and soil conditions are favorable and when prevailing winds are blowing away from nearby opposite dwellings.

18. Any manure that contains fly larvae and fly pupae shall be disked into the ground immediately or be treated with an approved and effective fly control method. If the manure utilization on a land application area creates a fly problem for the community, the owner and/or applicator shall be responsible for the control of all flies resulting from the application of the manure. Assistance in fly control and fly problem prevention can be obtained through contact with the local Clemson Extension Service Office.

19. Manure shall not be spread in the floodplain if there is danger of a major runoff event, unless the manure is incorporated during application or immediately after application.

20. Should the manure be stockpiled more than three (3) days, the manure shall be stored on a concrete pad and/or other acceptable means and covered with an acceptable cover to prevent odors, vectors and runoff. The cover should be properly vented with screen wire to let the gases escape. The edges of the cover should be properly anchored.

21. Manure Brokers and other manure transporters shall use all sanitary precautions in the collection, storage, transportation, and spreading of manures. The body of all vehicles transporting manure shall be wholly enclosed, or shall at all times, while in transit, be kept covered with an appropriate cover provided with eyelets and rope tie-downs, or any other approved method which shall prevent blowing or spillage of loose material or liquids. Should any spillage occur during the transportation of the manure, the owner/operator shall take immediate steps to clean up the manure.

D. Setbacks for manure utilization areas.

1. The minimum separation distance in feet required between a manure utilization area and a residence is located is 300 feet. If there are no residences within 300 feet of the manure utilization area, manure may be utilized up to the property line. The setback may be waived with the written consent of the owner of the residence. If the application method is injection or immediate incorporation, manure can be utilized up to the property line.

100 FINAL REGULATIONS

2. The minimum separation distance in feet required between a manure utilization area and waters of the State (including ephemeral and intermittent streams) is 100 feet when dry manure is spread on the ground surface, 75 feet when incorporation is the application method, and 50 feet when injection is the application method. When incorporation is accomplished within twenty-four hours of the initial application, the distance can be reduced to 50 feet.

3. The minimum separation distance in feet required between a manure utilization area and ditches and swales that discharge to waters of the State including ephemeral and intermittent streams is 50 feet.

4. The minimum separation distance in feet required between a manure utilization area and a potable drinking water well is 100 feet.

5. The Department may establish additional application buffer setbacks for property boundaries, roadways, residential developments, dwellings, water wells, drainage ways, and surface water (including ephemeral and intermittent streams) as deemed necessary to protect public health and the environment. Factors taken into consideration in the establishment of additional setbacks would be animal manure application method, adjacent land usage, public access, aerosols, runoff prevention, adjacent groundwater usage, and potential for vectors and odors.

E. The Department may establish additional permitting restrictions based upon soil and groundwater conditions to ensure protection of the groundwater and surface waters of the State (including ephemeral and intermittent streams). Criteria may include but is not limited to soil permeability, clay content, depth to bedrock, rock outcroppings, and depth to groundwater.

F. The Department may establish permit conditions to require that animal manure and other animal by-products application rates remain consistent with the lime and fertilizer requirements for the cover, feed, food, and fiber crops based on land grant universities (in the southeast) published lime and fertilizer recommendations (such as the Lime and Fertilizer Recommendations, Clemson Extension Services, Circular 476).

G. The Department may establish minimum requirements in permits for soil and/or groundwater monitoring, for manure utilization areas. Factors taken into consideration in the establishment of soil and groundwater monitoring shall include groundwater depth, operation flexibility, application frequency, type of animal manure, size of manure utilization area, and loading rate.

1. The Department may establish pre-application and post-application site monitoring requirements in permits for limiting nutrients or limiting constituents as determined by the Department.

2. The Department may establish permit conditions, which require the permittee to reduce, modify, or eliminate the animal manure and other animal by-products applications based on the results of this monitoring data.

3. The Department may modify, revoke and reissue, or revoke a permit based on the monitoring data.

H. The Department may require manure to be treated for odor control (i.e., composting or lime stabilizing for dry operations) prior to land application if the manure is not incorporated into the soil at the time of land application or if odors exist or are suspected to exist at an undesirable level. Manure, which has a very undesirable level of odor before treatment, such as turkey manure, shall not normally be permitted to be land applied on land near residences without appropriate treatment for odor control.

400.70 Other Requirements.

A. On a case-by-case basis, the Department may impose additional or more stringent requirements for the management, handling, treatment, storage, or utilization of animal manure and other animal by-products.

B. The following cases shall be evaluated for additional or more stringent requirements:

1. Source water protection. Facilities and manure utilization areas located within a state approved source water protection area.

2. 303(d) Impaired Waterbodies List. Facilities and manure utilization areas located upstream of an impaired waterbody.

3. Proximity to Outstanding Resource Waters, trout waters, shellfish waters, or would adversely affect a federally listed endangered or threatened species, its habitat, or a proposed or designated critical habitat.

4. Aquifer Vulnerability Area, an area where groundwater recharge may affect an aquifer.

C. If an adverse impact to the waters of the State (including ephemeral and intermittent streams) from animal manure handling, storage, treatment, or utilization practices are documented, through monitoring levels exceeding the standards set forth in Regulation 61-68 or a significant adverse trend occurs, the Department may require the person responsible for the animal manure to conduct an investigation to determine the extent of impact. The Department may require the person to remediate the water to within acceptable levels as set forth in Regulation 61-68.

D. Animal manure shall not be released to waters of the State (including ephemeral and intermittent streams).

E. Animal medical waste shall not be land applied with animal manure and other animal by-products.

F. Animal manure and other animal by-products shall not be removed by a manure broker from a quarantined farm, until that quarantine has been lifted by the State Veterinarian.

G. Animal manure and other animal by-products that are quarantined for noxious weed seed contamination shall not be removed by a manure broker unless approved by Clemson Plant Industry.

400.80 Odor Control Requirements.

A. An odor abatement plan shall be included, which may consist of the following:

1. Operation and maintenance practices which are used to eliminate or minimize undesirable odor levels in the form of a Best Management Plan for Odor Control;

2. Use of treatment processes for the reduction of undesirable odor levels;

3. Additional setbacks from property lines beyond the minimum setbacks given in this part;

4. Other methods as may be appropriate; or

5. Any combination of these methods.

B. Person(s) who transport, treat, store or land apply manure and other animal by-products shall utilize Best Management Practices normally associated with the proper operation and maintenance of an animal manure and other animal by-products treatment or storage facility and any manure utilization area to ensure an undesirable level of odor does not exist.

102 FINAL REGULATIONS

C. No person(s) who transport, treat, store or land apply manure and other animal by-products may cause, allow, or permit emission into the ambient air of any substance or combination of substances in quantities that an undesirable level of odor is determined to result unless preventive measures of the type set out below are taken to abate or control the emission to the satisfaction of the Department. When an odor problem comes to the attention of the Department through field surveillance or specific complaints, the Department shall determine if the odor is at an undesirable level.

D. After determining an undesirable level of odor exists, the Department shall require remediation of the undesirable level of odor.

E. The Department may require these abatement or control practices:

1. Remove or dispose of odorous materials;
2. Methods in handling and storage of odorous materials that minimize emissions;
 - a. Dry manure to a moisture content of 50% or less;
 - b. Use disinfection to kill microorganisms present in manure;
 - c. Aerate manure;
 - d. Compost solid manure and other animal by-products;
 - e. Utilize Odor Control Additives.
3. Prescribed standards in the maintenance of premises to reduce odorous emissions;
 - a. Cover or reduce the surface area of manure and other animal by-products storage. (Vents shall be provided for release of pressure created by manure gases if completely sealed covers are utilized);
 - b. Plant trees around or downwind of the manure and other animal by-products storage and treatment facilities;
 - c. Incorporate manure and other animal by-products immediately after land application;
 - d. Select appropriate times for land application.
4. Best available control technology to reduce odorous emissions.

F. If the permittee fails to control or abate the odor problems at a land application site to the satisfaction and within a time frame determined by the Department, approval for land application of manure on the manure utilization area in question may be revoked. Additional land may be required to be added to the animal facility management plan, if necessary to provide a sufficient amount of land for manure utilization.

400.90 Vector Control Requirements

A. A Vector Abatement Plan shall be developed for the dry animal manure and other animal by-products storage or treatment facility or land application areas, (if applicable). The Vector Abatement Plan shall at a minimum consist of the following:

1. Normal management practices used at the dry animal manure and other animal by-products storage or treatment facility to ensure there is no accumulation of organic or inorganic materials to the extent and in such a manner as to create a harborage for rodents or other vectors that may be dangerous to public health.

2. A list of specific actions to be taken by the broker if vectors are identified as a problem at the dry animal manure and other animal by-products storage or treatment facility or land application site. These actions should be listed for each vector problem, e.g., actions to be taken for fly problems, actions to be taken for rodent problems, etc.

3. If the broker is not performing land application, but is only transferring the manure to a person who is accepting responsibility for handling the manure in accordance with these regulations, the person accepting the manure shall be responsible for correcting any nuisance problems resulting from the land application of manure.

B. No broker may cause, allow, or permit vectors to breed or accumulate in quantities that result in a nuisance level, as determined by the Department.

C. After determining a vector problem exists, the Department shall require remediation of the problem to the satisfaction of the Department.

D. The Department may require abatement or control practices, including, but not limited to the following:

1. Remove and properly dispose of vector infested materials;
2. Methods in handling and storage of materials that minimize vector attraction;
 - a. Compost solid manure;
 - b. Appropriately use vector control chemicals, poisons or insecticides (take caution to prevent insecticide resistance problems);
 - c. Utilize traps, or electrically charged devices;
 - d. Utilize biological agents;
 - e. Utilize Integrated Pest Management;
 - f. Incorporate manure and other animal by-products immediately after land application.
3. Prescribed standards in the maintenance of premises to reduce vector attraction;
 - a. Remove any standing water that may be a breeding area for vectors;
 - b. Keep storage and/or treatment facilities clean and free from trash or debris;
 - c. Properly use and service bait stations;
 - d. Keep grass and weeds mowed around the manure storage and/or treatment areas;
 - e. Cover or reduce the surface area of manure and other animal by-products storage. (Vents shall be provided for release of pressure created by manure gases if completely sealed covers are used);
 - f. Conduct a weekly vector monitoring program;

104 FINAL REGULATIONS

- g. Be aware of insecticide resistance problems, and rotate use of different insecticides;
 - h. Ensure proper grading and drainage around the buildings to prevent rain water from entering the buildings or ponding around the buildings.
4. Utilize the best available control technology to reduce vector attraction and breeding.

400.100 Record Keeping.

A. A copy of the approved Broker Management Plan, including approved updates, and a copy of the permit(s) issued to the broker shall be retained by the permittee for as long as the broker is in operation.

B. All application information submitted to the Department shall be retained by the permittee for eight years. However, if the facility was permitted prior to the effective date of this regulation, and the permittee has previously discarded these documents since there was no requirement to maintain records at that time, this requirement shall not apply.

C. Animal manure Records. These records shall be kept for four years. The records shall include the following:

1. Name, address, county and phone number of all producers from whom the broker purchases or accepts animal manure;
2. Sampling results for the animal manure;
3. Amount (in tons) of animal manure obtained from each producer; and
4. Date of transfer.

D. All completed Manure Transfer contracts, including soil analysis results, between the broker and the person(s) purchasing or accepting animal manure shall be kept by the broker for eight years.

E. All records retained by the broker shall be kept at an appropriate business office, or other location as approved by the Department.

F. All records retained by the broker shall be made available to the Department during normal business hours for review and copying, upon request by the Department.

400.110 Reporting.

A. The Department may establish reporting requirements in permits as it deems appropriate. These reporting requirements may include the following:

1. Manure Balance Sheet. Listing the producer/farm name and amount (tons) of manure provided and a listing of all person(s) who bought or accepted animal manure and the amount (tons) accepted. Any manure that is currently in storage or treatment structures at the broker facility shall be accounted for in this report.

B. The Department may require on a case-by-case basis any of the required records, as outlined in section 400.100, to be reported on an annual basis.

400.120 Training Requirements.

A. An operator of a manure brokering business shall be trained on the operation of animal manure management under the poultry version of the certification program created by Clemson University. The certification shall be obtained within one year of the effective date of the issued permit.

B. Failure to obtain the training and education as provided in this Section shall be deemed a violation of this Regulation and a violation of the permit.

400.130 Violations.

A. Persons who violate this regulation or any permit issued under this regulation are subject to the penalties in Sections 48-1-320 (Criminal Penalties) and 48-1-330 (Civil Penalties) of the South Carolina Pollution Control Act.

Part 500 - Integrator Registration Program.

- 500.10 General.
- 500.20 Submittal Requirements.
- 500.30 Certificate of Integrator Registration.
- 500.40 Reporting.
- 500.50 Other Requirements.
- 500.60 Violations.

500.10 General.

A. The Department encourages Integrators to be involved with the permitting and compliance of their growers.

B. The Department encourages Integrators to assist growers in the disposal of dead animals and the proper utilization of animal manure.

C. Integrating companies shall inform each prospective grower that they are required by State law to obtain a permit from the Department. The Department recommends that growers verify an exemption status from the Department prior to construction of an agricultural animal facility.

500.20 Submittal Requirements.

A. Each integrating company that contracts with animal producers that operate facilities located within the State shall submit to the Department a Request for Registration form, as provided by the Department. The integrator shall work with the Department to identify growers that are unpermitted. The Department may schedule an annual inspection in order to review grower lists and identify unpermitted farms. The integrator shall provide the Department any additional information needed to contact unpermitted growers contracting with their company. Existing Integrators or integrating companies shall submit a request form to the Department no later than one year after the effective date of these regulations.

B. Animal Manure Analysis Information. If the producers that contract with the integrator use the same feed rations and have dry animal manure analyses that come out to be consistently the same, they may qualify to use one analysis for their individual testing requirement. However, if any of these producers utilize a different feed ration, utilize a significant amount of medications as compared to the others, or use any other inconsistent bedding materials, animal manure treatments or vector treatments, they shall be required to run a separate and individual analysis on their animal manure. The Integrator is responsible for notifying the Department of any

106 FINAL REGULATIONS

significant feed composition changes. This benefit shall not be available to liquid manure handling systems, since other factors specific to each site, such as rainfall could affect the nutrient analysis of the manure.

C. If an integrating company can certify through general feed composition reports that a certain constituent, such as arsenic, is not present in their feed or medications, the producers that contract with that integrator may be exempt from testing for that constituent. The integrator shall submit a written request, along with general feed composition reports, and a list of growers who are using this feed ration. The Department shall approve this report in writing before the constituent can be removed from the analysis requirements. Each grower who is included in this exemption shall be notified in writing by the Department.

D. Swine Integrators must submit a plan addressing cumulative environmental and public health impacts of their contracted facilities with their first request for integrator certification. The plan must cover the integrator's existing contract growers and the projected 3 year increase in the number of permitted facilities and swine. The plan must include:

1. The general area served by the integrator;
2. The number of existing swine facilities under contract;
3. The number of swine grown (broken down by facility);
4. The number of projected new facilities (broken down by facility size) with the total number of swine;
5. The integrating company's: procedures, protocols, policies, programs, required manure treatment and utilization technologies, etc. to ensure the cumulative impacts from their contracted facilities do not cause any adverse impact to the environment or public health; and
6. An assessment of the adverse environmental or public impact, if any, from the existing and proposed swine facilities under contract with the integrator.

E. The Swine Integrator must also provide to the Department any other supplemental information that may reasonably be required by the Department to assess cumulative adverse environmental or public health impacts.

F. The environmental and public health impact assessment plan must be approved by the Department before integrator certification can be granted. Once approved, the integrator may update the plan at any time. Also, the Department may require the plan be updated from time to time.

G. All permits for growers under contract with the integrator must be in accordance with the integrator's approved plan.

500.30 Certificate of Integrator Registration

A. The Department shall issue a certificate of integrator registration to integrators or integrating companies that meet all the requirements of this part.

B. All integrators or integrating companies shall hold a valid certificate of registration to operate in the State.

C. Certificates of integrator registration issued under this part do not have any administrative procedures for public notice under these regulations.

D. The certificate of integrator registration may be modified, revoked or reissued if the requirements of this part are not met by the integrator or integrating company.

500.40 Reporting.

A. The Department may establish reporting requirements for integrators as it deems appropriate. These reporting requirements may include the following:

1. General feed composition reports. Feed composition reports provided in accordance with this section shall be exempt from disclosure under the Freedom of Information Act; and
2. A list of any special treatments or chemicals added to the manure or manure storage structure that are required by the integrator.

500.50 Other Requirements.

A. An integrator or integrating company shall not knowingly provide animals to an animal facility that does not hold a valid agricultural permit from the Department. Any existing, unexpired contracts may be fulfilled, but the integrator may not renew the contract until the facility has obtained a valid permit. The Department shall allow a grace period of at least one year for existing unpermitted farms.

B. The integrator or integrating company shall take reasonable steps to ensure that the animal facilities that are under contract with the company are trained and educated on compliance with their permit to include the following:

1. Notify growers of their responsibility to update their Animal Facility Management Plan and permit if changes are made in the operation of the farm; and
2. Provide information on technical assistance to its growers on compliance and assist the producers in selecting a corrective action.

500.60 Violations.

A. Persons who violate this regulation or any permit issued under this regulation are subject to the penalties in Sections 48-1-320 (Criminal Penalties) and 48-1-330 (Civil Penalties) of the South Carolina Pollution Control Act.

Part 600 - Severability

A. Should a section, paragraph, sentence, clause, phrase, or other part of this regulation be declared invalid for any reason, the remainder shall not be affected.

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:

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

108 FINAL REGULATIONS

DESCRIPTION OF REGULATION:

Purpose of Regulation: Amendment of R.61-43 will satisfy the requirements of the 1996 Act No. 460. The amendment will: (1) establish a new Part 50 where all definitions are now found; (2) rewrite Part 100 (Swine Facilities) in its entirety which will be the separate and distinct regulation for swine facilities as required by the 1996 Act No. 460; (3) add new requirements to Part 100 which address a new class of large swine facilities; (4) modify Part 200 (Other Animal Facilities) and Part 300 (Innovative and Alternative Technology); (5) add a new section that specifically outlines requirements for manure broker operations, as well as a section that addresses integrator registration, and a section for severability; and (6) incorporate recommendations made by a Regulation Development Committee which was organized to review the regulation for issues and concerns.

Legal Authority: The Standards for the Permitting of Agricultural Animal Facilities are authorized by S.C. Code Section 48-1-10 et seq. and the 1996 Act No. 460.

Plan for Implementation: The proposed amendments will make changes to and be incorporated into R.61-43 upon approval of both the Board of Health and Environmental Control (Board) and the General Assembly and publication in the State Register. The proposed amendments will be implemented in the same manner in which the existing regulations are implemented.

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

In July 1996, the 1996 Act No. 460 which included the Confined Swine Feeding Operations Act became effective. In this act, the S.C. Department of Health and Environmental Control was directed to promulgate regulations for swine facilities. The Department promulgated Regulation 61-43, Standards for the Permitting of Agricultural Animal Facilities, which addresses swine facilities, other animal facilities and Innovative and Alternative Technologies. Regulation 61-43 became effective on June 26, 1998. The 1996 Act No. 460 also directed the Department to promulgate separate and distinct regulations after the initial regulation was promulgated and implemented. During the Spring of 2000, the Department organized a Regulation Development Committee to assist in the review of the current regulations and development of a separate and distinct regulation. The following agencies, organizations and governing bodies were represented on this committee:

- South Carolina Department of Health and Environmental Control
- South Carolina Section of the Sierra Club
- South Carolina Coastal Conservation League
- South Carolina Senate
- South Carolina House of Representatives
- South Carolina Farm Bureau Federation
- South Carolina Pork Board
- South Carolina Poultry Federation
- South Carolina Dairy Association
- South Carolina Cattlemen Association
- South Carolina AgFirst Farm Credit Agencies
- Clemson University Agricultural Extension Service
- United States Department of Agriculture Natural Resources Conservation Service

The proposed amendments incorporate recommendations made by the Regulation Development Committee, which are part of a comprehensive strategy to further reduce the potential of animal feeding operations to impact the environment and the waters of the state.

The proposed amendments also include new requirements that have been added to Part 100 of the regulation that address a new class of large swine facilities. The Board directed Department staff to analyze the issues associated

with large swine facilities in a motion it passed on May 10, 2001. Department staff conducted two public listening sessions in order to receive comments and input from the public on how South Carolina should regulate large swine facilities beyond the requirements already established in Regulation 61-43. Department staff considered each comment in the formulation of these new requirements for large swine facilities included in the proposed amendment. Other changes to the regulation involve some changes in terminology that reflect changes in the animal industry and modifications necessary to correct several mistakes in the previous regulation. At the public hearing, the Board directed Department staff to eliminate the medium swine facility category in the proposed amendments and require all swine facilities in this category to meet the extremely stringent requirements for large swine facilities. The Board also directed Department staff to remove several sections in the regulation dealing with financial and compliance assurance. In a special session conducted on January 31, 2002, the Board directed staff to make some additional changes to the regulation. Staff was directed to return to the original proposed requirements for large swine facilities with less than 1,000,000 pounds normal production live weight. Some adjustments were made to increase the setbacks for large swine facilities with less than 1,000,000 pounds normal production live weight. The Board also added a new separation distance of two miles between large swine facilities with less than 1,000,000 pounds normal production live weight. Large swine facilities with less than 1,000,000 pounds normal production live weight will also be prohibited from utilizing open anaerobic lagoons and manure storage ponds. On April 11, 2002, the SC House of Representatives Agriculture, Natural Resources & Environmental Affairs Committee returned the regulation and requested that Department make some changes to the proposed regulation and resubmit the regulations to the General Assembly. These changes are outlined in Table II above.

DETERMINATION OF COSTS AND BENEFITS:

There will be no additional cost to the state or its political subdivisions. The agricultural animal facilities (other than swine) in the state are already meeting most of the requirements in these regulations. Some existing animal facilities will incur additional costs due to monitoring requirements. The new requirements that may effect the existing regulated community are relatively inexpensive. For example, soil sampling and manure sampling will be required for all permittees, and the cost is approximately \$5 per sample. However, existing swine facilities will be impacted greatly by the new requirements for large swine facilities. New or expanding large swine facilities proposed in the State will incur significant additional costs in order to comply with the new technology requirements included in the proposed amendment of this regulation. These additional costs may be so great that the new requirements will limit any further expansion of existing swine facilities or addition of new swine facilities. The extremely large swine farms will be the only category that will be in a position economically to feasibly afford to implement these new requirements.

UNCERTAINTIES OF ESTIMATES:

None.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

The preventative measures and setbacks in the regulations will reduce the potential for animal waste to come into contact with the environment in a negative fashion. This regulation will also protect public health through the protection of waters of the State, including groundwater.

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

The proposed revisions are necessary to protect public health and the environment, and to address additional impacts that the changing animal industry poses to the State. Without these amendments, there will be an adverse effect on the Department's ability to carry out its strategy to further reduce the potential of animal feeding operations to impact public health, the environment, and waters of the state.

110 FINAL REGULATIONS

Document No. 2698
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 72
Statutory Authority: S.C. Code Section 48-14-10 *et seq.*

R.72-300. *Standards for Stormwater Management and Sediment Reduction*

Synopsis:

R.72-306.B will be amended to increase the application fee for new land disturbing activities and to charge a fee for permit modifications.

A Notice of Proposed Regulation for this proposed amendment was published in the State Register on November 25, 2001. See Discussion below and Statement of Need and Reasonableness herein.

Discussion of Proposed Revisions:

Proposed Amendment of R.72-300:

72-306.B Amend this section to 1) change the application fee for land disturbing activities to \$100 per disturbed acre up to a maximum of \$2000, and 2) add a fee for review of permit modifications.

Text of Proposed Amendment:

Amend R.72-306.B to read:

Where the Commission is the implementing agency, the Commission may assess a fee not to exceed \$100.00 per disturbed acre up to a maximum of \$2000.00. No fee will be charged for land disturbing activities which disturb two acres or less. A fee of \$100.00 will be charged for permit modifications.

Fiscal Impact Statement:

The Department estimates no additional cost will be incurred by the state or its political subdivisions as a result of the promulgation, approval, and implementation of these amendments; therefore, no additional state funding is being requested. These fees are intended to provide a static level of funding for the programs as described herein.

Statement of Need and Reasonableness:

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

DESCRIPTION OF REGULATIONS: R.72-300, Standards for Stormwater Management and Sediment Reduction

Purpose of Regulation: The purpose of this amendment is to amend R.72-306 to increase the application fee for new land disturbing activities, and charge a fee for permit modifications.

Legal Authority: S.C. Code Section 48-14-10 *et seq.*

Plan for Implementation: The proposed amendments will make changes to and be incorporated into R.72-306

upon approval of the Board of Health and Environmental Control, the S.C. General Assembly, and publication in the State Register. The proposed amendments will be implemented in the same manner in which the existing regulations are implemented.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS: Revision of R.72-306.B is proposed to increase the application fees for new land disturbing activities. These fees have been at the current level of \$50 per disturbed acres with a maximum of \$1000 since their inception in 1992. In recent years, the annual program costs were more than three times the collected fee revenue. Additionally, costs are increasing as more and more sites are added to the long-term inspection inventory. The proposed fee increase will help to offset increasing program costs and recent budget cuts, as well as maintain existing staff and review times for issuing permits. No additional staff will be hired as a result of this increase in fees.

DETERMINATION OF COSTS AND BENEFITS: There will be an increased cost to the regulated community with the implementation of the regulation changes proposed above. However, such costs have been kept to a minimum in order to limit impacts on the regulated public. The proposed increases will defray a portion of the costs of administering the programs. The benefits to the citizens of the State, which accrue through the protection of coastal tidelands and statewide water resources, are significant and offset the cost to the regulated community. Additionally, these changes will help insure the continued ability of the Department meet the needs of the regulated community for timely processing of permitting requests by maintaining existing staffing levels.

UNCERTAINTIES OF ESTIMATES: The Department can be reasonably accurate on the costs associated with time and effort to review environmental permits. Some uncertainties exist with estimating future permitting demand. However, since actively measuring and reporting on required time frames, the Department has had a 97% success rate in meeting review times established in regulations.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: Substantive review of projects which have a negative impact on the environment and/or public health is necessary to protect both the natural resources of South Carolina and the health of its citizens. Experience has shown that proper funding of permitting programs, coupled with an organizational philosophy to streamline the process, works best to both protect the environment and provide an economic boost to applicants by assuring them a timely response from the State.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED: To repeat the statement above, a lack of appropriate resources slows the permitting process. Insufficient funding creates backlogs of permits awaiting review. This in turn negatively affects the timely turnaround of projects, which may be addressing a potential pollution problem. It prevents the issuance of restrictive permits intended to protect the public health and environment.

Document No. 2719

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

Statutory Authority: 44-63-10, 1976 S.C. Code of Laws, as amended.

R.61-19, *Vital Statistics*

Synopsis:

This amendment will substantially amend Regulation 61-19, *Vital Statistics*, to ensure that birth, death, and fetal death data captured is in compliance with the new standard model adopted by the National Center for Health Statistics (NCHS) for implementation January 2004.

112 FINAL REGULATIONS

NCHS is the federal government's principal vital and health statistics agency. NCHS provides a wide variety of data with which the health of our Nation is monitored. NCHS data systems include data on vital events as well as information on health status, lifestyle and exposure to unhealthy influences, etc. This data is used by policymakers in Congress and the Administration, by medical researchers, and by others in the health community.

The philosophy of the standard certificates/reports being implemented in January 2004, was based on an electronic process to register vital events, not to design a word processing package to complete a paper document. Revised vital record software packages are being structured to interface with hospital patient record packages, funeral director packages, etc. A major emphasis of the 2004 revision is to improve quality. A system will not just capture a response; the system will capture quality information. Therefore, it is imperative for the State of South Carolina to revise regulation to ensure that our State collects its vital event data on the new standard model beginning January 01, 2004.

Discussion of Revisions:

SECTION CITATION AND EXPLANATION OF CHANGE:

SECTION 1. Definitions as Used in These Regulations:

The following definitions are revised: Vital Statistics, System of Vital Statistics, Vital Records, File, Live Birth, Fetal Death, Induced Termination of Pregnancy, Final Disposition, Physician, and Institution. Revising these definitions is recommended to clarify language for source providers to ensure proper registration.

The following new definitions are added in alphabetical order: Filing, Date of and Vital Reports. The addition of these definitions is to differentiate between certificates and reports filed with the Division and to define the date of registration.

SECTION 2 Duties of State Registrar of Vital Statistics:

Section 2.a.2 is revised to clarify ownership of the records housed in the Division of Vital Records.

Section 2.a.3 is revised to provide the State Registrar with the authority to designate the location of registration of vital events.

Section 2.a.4 is revised to provide the State Registrar with the authority to designate the method of registration of vital events.

Section 2.a.5 is revised to incorporate the proper name of our Agency.

Sections 2.a.6, 7 & 8 are added to address additional guidance for the State Registrar relative to vital event data.

Section 2.b is revised to provide authority to designated positions for vital event registration and to make stylistic language changes of gender.

SECTION 3 Duties of County Registrar:

Section 3.a is revised for stylistic language changes of gender.

Section 3.a.3 is revised to allow for the State Registrar to designate the time and method of vital event registration.

Section 3.a.4 is revised for stylistic language changes of gender.

Section 3.b is revised for stylistic language changes of gender and to make statement imperative.

Section 3.d is deleted because 3.e provides same instruction.

Section 3.e is revised to allow for non-specificity of title for the person entering the date of filing on certificates/reports. Section 3.e. will be renumbered to Section 3.d.

Sections 3.a.1, 3.a.2, 3.a.5, 3.a.6, and 3.c remain the same

SECTION 4 Content of Certificates and Reports:

Sections 4.a. and b are revised to incorporate the correct name of our Agency as well as to clarify language.

Section 4.c is added to provide documentation as to the methods of registration.

SECTION 5 Forms Property of South Carolina Department of Health and Environmental Control:

Section 5 is revised to clarify ownership of registration forms as well as the method of registration. The section title is revised to incorporate the correct title of our agency.

SECTION 6 Preparation of Certificates:

Section 6.a is revised to incorporate emerging technology in methods of registration.

Section 6.a.3 is revised to allowed both written and/or electronic signatures.

Sub-items 6.a.1, 2, 4, 5, 6, 7, 8 and 9 remain the same.

SECTION 7 Cancellation of Fraudulent Records:

Sections 7.a and b are revised for stylistic language changes of gender.

SECTION 8 Birth Registration:

Sections 8.a, 8.b, 8.c, 8.e, and 8.h are revised to clarify filing requirements for birth registration.

Sections 8.d, 8.f and 8.g remain the same.

SECTION 9 Infants of Unknown Parentage B Foundling Registration:

Sections 9.a, 9.a.4, 9.d, 9.e, are revised for stylistic language changes of gender and for wording clarification.

Sections 9.a.1, 2, 3, 5, 9.b, and 9.c remain the same.

114 FINAL REGULATIONS

SECTION 10 Delayed Registration of Birth:

Sections 10.a, b, c, and d are revised for stylistic language changes of gender.

Section 10.e is added to deter the filing of fraudulent birth certificates.

SECTION 11 Facts to be Established by Documentary Evidence for a Delayed Registration of Birth:

Section 11.d is revised for correction of punctuation.

Sections 11.a, 11.b, 11.c remain the same.

SECTION 13 Documentary Evidence B Acceptability:

Section 13 is revised to increase the age of documents acceptable for establishing a delayed certificate of birth.

SECTION 14 Abstraction and Certification by the State Registrar of Vital Statistics:

Sections 14.a, 14.b and 14.b.2 are revised for stylistic language changes of gender.

Sections 14.a.1, a.2, a.3, a.4, b.1, and b.3 remain the same.

SECTION 16 New Certificates of Birth Following Adoption, Legitimation, Court Decree of Paternity, or Paternity Acknowledgment:

Section 16.c is revised for stylistic language changes of gender.

Sections 16.1, 16.a.1, 16.a.2, 16.a.3, 16.a.4, 16.b, 16.b.1, 16.b.2, 16.b.3, 16.b.4, 16.b.5, 16.d, 16.e and 16.f remain the same.

SECTION 18 Death Registration:

Sections 18.a, 18.a.2, 18.b, 18.c, 18.d, 18.e, 18.f, 18.g are revised for stylistic language changes of gender.

Section 18.a.1 remains the same.

SECTION 19 Delayed Registration of Death:

Sections 19.a.1 and 19.a.2 are revised for stylistic language changes of gender.

Introductory statement remains the same.

SECTION 20 Institution May Assist in Preparation of Certificate:

Section 20.a is revised for stylistic language changes of gender.

Sections 20.a.1 and 20.a.2 remain the same.

SECTION 21 Reports of Fetal Death:

Sections 21.a.1 and 21.a.3 are revised for stylistic language changes of gender and to allow the State Registrar to determine the method of registration.

Sections 21.a, 21.a.2, 21.a.4, b, c, and d remain the same.

SECTION 22 Reports of Induced Termination of Pregnancy:

Section 22.a is revised for stylistic language changes of gender.

Section 22.b remains the same.

SECTION 23 Permits Governing the Disposal or Transportation of Dead Human Bodies:

Section 23.b is revised for stylistic language changes of gender.

Sections 23.a, 23.c, 23.d, 23.e, 23.f remain the same.

SECTION 25 Removal of Body:

Sections 25.a.1 and 25.a.2 are revised for stylistic language changes of gender.

Introductory statement remains the same.

SECTION 26 Incomplete Certificates:

Sections 26.a and 26.b are revised to allow State Registrar to determine the method of registration.

SECTION 30 Correction of Minor Errors on Birth and Death Certificates During First Year:

Section 30 is revised for stylistic language changes of gender.

SECTION 32 Addition of Given Names after Registration:

Sections 32.a and 32.b are revised for stylistic language changes of gender.

Sections 32.a.1, 32.a.2, 32.a.3, 32.a.4, and 32.a.5 remain the same.

SECTION 33 Medical Items:

116 FINAL REGULATIONS

Section 33 is revised to allow State Registrar to determine the method of transmission.

SECTION 35 Evaluation of Evidence:

Section 35 is revised for stylistic language changes of gender.

SECTION 37 Legal Changes:

Section 37.a is revised for stylistic language changes of gender.

Sections 37.a.1, 37.a.2, 37.a.3, 37.a.4, 37.b, and 37.c remain the same.

SECTION 38 Preservation of Records:

Section 38 is revised for stylistic language changes of gender.

SECTION 39 Disclosure of Records:

Section 39.a is revised for stylistic language changes of gender.

Section 39.f is added B original site was Section 40.c.

Sections 39.b, 39.c, 39.d, and 39.e remain the same.

SECTION 40 Certified Copies:

Section 40.b is revised for stylistic language changes of gender.

Section 40.c is deleted B added as Section 39.f.

Section 40.a remains the same.

SECTION 41 Persons Required to Keep Records:

Sections 41.c and 41.d are revised for stylistic language changes of gender.

Sections 41.a and 41.b remain the same.

SECTION 42 Duties to Furnish Information Relative to Vital Events:

Section 42 is revised for stylistic language changes of gender.

Text:

Replace Section 1 to read:

Section 1 Definitions as used in these Regulations

- a. A **Dead Body**≡ means a lifeless human body or parts of such body or bones thereof from the state of which it reasonably may be concluded that death recently occurred.
- b. A **Fetal Death**≡ means death prior to the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy and which is not an induced termination of pregnancy. The death is indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. Heartbeats are to be distinguished from transient cardiac contractions; respirations are to be distinguished from fleeting respiratory efforts or gasps.
- c. A **File**≡ means the presentation and acceptance of a vital record or report provided for in these Regulations by the Division of Vital Records.
- d. A **Filing, Date of**≡ means the date a vital record is accepted for registration.
- e. A **Final Disposition**≡ means the burial, interment, cremation, removal from the State or other authorized disposition of a dead body or fetus.
- f. A **Induced Termination of Pregnancy**≡ means the purposeful interruption of an intrauterine pregnancy with the intention other than to produce a live-born infant, and which does not result in a live birth. This definition excludes management of prolonged retention of products of conception following fetal death.
- g. A **Institution**≡ means any establishment, public or private which provides in-patient or outpatient medical, surgical, or diagnostic care or treatment, or nursing, custodial or domiciliary care, or to which persons are committed by law.
- h. A **Live Birth**≡ means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, which after such expulsion or extraction, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of the voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached. Heartbeats are to be distinguished from transient cardiac contractions; respirations are to be distinguished from fleeting respiratory efforts or gasps.
- i. A **Physician**≡ means a person authorized or licensed to practice medicine pursuant to Section 40-47-5 et seq, 1976 of the Code of Laws of South Carolina, as amended.
- j. A **Registration**≡ means the acceptance by the Division of Vital Records and the incorporation of vital records provided for in these Regulations into its official records.
- k. A **System of Vital Statistics**≡ includes the registration, collection, preservation, amendment and certification of vital records and activities related thereto, including the tabulation, analysis, dissemination and publication of vital statistics.
- l. A **Vital Records**≡ means certificates of birth, death, marriage, and data related thereto.
- m. A **Vital Reports**≡ means reports of fetal death, divorce or annulment of marriage and induced terminations of pregnancy and data related thereto.

118 FINAL REGULATIONS

n. AVital Statistics≡ means the data derived from certificates and reports of birth, death, fetal death, induced termination of pregnancy, marriage and divorce or annulment and related reports.

Section 2 is revised to read:

Section 2 Duties of State Registrar of Vital Statistics

a. The State Registrar shall:

1. Administer and enforce the Law as relates to Vital Statistics and the provision of these Regulations and issue instructions for the efficient administration of the statewide system of Vital Statistics.

2. Direct and supervise the statewide system of Vital Statistics and be custodian of its records.

3. Direct, supervise, and control the activities of all persons when they are engaged in activities pertaining to the statewide system of vital statistics.

4. Prescribe, with the approval of the Department of Health and Environmental Control, furnish and distribute such forms as are required by law, and these regulations, or prescribe such other means for transmission of data as will accomplish the purpose of complete and accurate reporting and registration.

5. Prepare and publish annual reports of Vital Statistics of this State and such other reports as may be required by the South Carolina Department of Health and Environmental Control.

6. Provide to local health agencies copies of or data derived from certificates and reports required under these Regulations, as he or she shall determine are necessary for local health planning and program activities. The State Registrar shall establish a schedule with each local health agency for transmittal of the copies or data. The copies or data shall remain the property of the Division of Vital Records, and the uses, which may be made of them, shall be governed by the State Registrar.

7. Conduct training programs to promote uniformity of policy and procedures throughout the State in matters pertaining to the system of vital statistics.

8. The State Registrar may establish or designate offices in the State as provided by these Regulations to aid in the efficient administration of the statewide system of Vital Statistics.

b. The State Registrar may delegate such functions and duties vested in him or her to the Assistant State Registrar, to employees of the Division of Vital Records and to the county registrars as he or she deems necessary or expedient.

Sections 3.a, 3.a.3 and 3.a.4 are revised to read:

a. Each county registrar shall serve as the agent of the State Registrar in his or her county and shall:

3. Transmit certificates, reports, forms, records or electronic files filed with him or her to the State Registrar at intervals prescribed by the State Registrar. Each shipment of certificates shall be accompanied by a transmittal form provided for that purpose.

4. Maintain lists of institutions, funeral directors, physicians and midwives in his or her county.

Section 3.b is revised to read:

b. The county registrar shall transmit to the State Registrar, on a form furnished or approved by the State Registrar, the name of the person he or she selects as deputy county registrar. The appointee shall assume the duties of office when approval is received from the State Registrar.

Delete Section 3.d:

d. The county registrar or deputy county registrar shall sign each certificate of birth and death, and enter the date received by him.

Section 3.e is revised and renumbered to 3.d to read:

d. The registrar shall enter the date of filing on each Certificate of Birth, Certificate of Death and Report of Fetal Death received by him or her.

Section 4 is revised to read:

Section 4 Content of Certificates and Reports

a. In order to promote and maintain nationwide uniformity in the system of Vital Statistics, the forms of certificates and reports required by Law and these Regulations, shall include as a minimum the items recommended by the Federal Agency responsible for national Vital Statistics, subject to approval of and modification by the Board of the South Carolina Department of Health and Environmental Control.

b. Each certificate, report and other documents required to be filed by the Law and these Regulations shall have entered upon its face the date of filing duly attested.

c. Information required in certificates, forms, records, or reports authorized by Law and these Regulations may be filed, verified, registered, and stored by photographic, electronic, or other means as prescribed by the State Registrar.

Section 5 is revised to read:

Section 5 Forms Property of South Carolina Department of Health and Environmental Control

All forms, certificates, records, electronic data files, and reports used in the system of vital statistics are the property of the South Carolina Department of Health and Environmental Control and shall be surrendered to the State Registrar of Vital Statistics upon demand. The forms prescribed and distributed by the State Registrar shall be used in the reporting of vital statistics or in making copies thereof. No forms shall be used in the reporting of vital events or making copies of vital records except those furnished or approved by the State Registrar. Electronic data records will be accepted only when standards set by the State Registrar are met.

Section 6 is revised to read:

Section 6 Preparation of Certificates

a. All forms, certificates, reports and records provided for in the Law governing vital statistics and these Regulations shall be typewritten or printed legibly in dark, unfading ink or stored on electronic media

120 FINAL REGULATIONS

approved by the State Registrar. All signatures required shall be entered in dark unfading ink or stored electronically. Unless otherwise directed by the State Registrar, no certificate shall be complete and correct and acceptable for filing:

1. that does not supply all items of information called for thereon or satisfactorily account for their omission;
2. that contains alterations or erasures;
3. that does not contain signatures as required;
4. that is marked Acopy≡ or Aduplicate≡;
5. that is a carbon copy, except in the case of marriage license;
6. that is prepared on an improper form;
7. that contains obviously improper or inconsistent data;
8. that contains an indefinite cause of death, denoting only symptoms of disease or conditions resulting from disease;
9. that is not prepared in conformity with these Regulations or instructions issued by the State Registrar.

Section 7 is revised to read:

Section 7 Cancellation of Fraudulent Records

a. When the State Registrar shall be satisfied that a certificate was filed through fraud or misrepresentation, he or she shall give the person named in the certificate notice in writing of his or her intention to cancel said certificate. The notice shall give such person an opportunity to appear and show cause why the certificate should not be cancelled. The notice may be served on such person or in the case of a minor or incompetent, on his or her parent or guardian by forwarding the notice by registered mail to his or her last known address.

b. Unless such person or his or her parent or guardian shall, within thirty (30) days after the date of mailing the notice, show cause why the certificate shall not be cancelled, the State Registrar shall cancel the certificate and it shall not be available for certification.

Sections 8.a, 8.b, 8.c, 8.e and 8.h are revised. Sections 8.d, 8.f, and 8.g remain the same:

a. A certificate of birth for each live birth which occurs in this State shall be filed with the county registrar of the county in which birth occurs within five (5) days after such birth, or as otherwise directed by the State Registrar and shall be filed by such registrar, if it has been completed and filed in accordance with this section.

b. When a birth occurs in an institution or en route thereto, the person in charge of the institution or his or her designated representative shall obtain the personal data, prepare the certificate, certify that the child was born alive at the place and time and on the date stated either by signatures or by an approved electronic process, and file it with the county within the required five (5) days, or as otherwise directed by the State Registrar. The physician or other person in attendance shall certify to the facts of birth and provide the medical information required by the certificate within seventy-two (72) hours after birth. If the attendant does not certify to the facts of birth within the prescribed seventy-two (72) hours the person in charge of the institution or his or her designated representative shall complete the certificate.

c. When a newborn infant, born at home, is brought to the emergency room or admitted to the hospital, the person in charge of the institution or his or her designated representative shall be responsible for filing a birth certificate. If all of the information is not available to complete the birth certificate, the person in charge of the

institution or his or her designated representative shall attach a statement to contain the name and address of the person who brought the infant to this hospital for treatment.

e. When a birth occurs on a moving conveyance within the United States and the child is first removed from the conveyance in this State, the birth shall be filed in this State and the place where it is first removed shall be considered the place of birth. When a birth occurs on a moving conveyance while in international waters or air space or in a foreign country and the child is first removed from the conveyance in this State, the birth shall be filed in this State but the certificate shall show the actual place of birth insofar as can be determined.

h. The mother or other informant shall verify the accuracy of the personal data entered thereon in time to permit its filing within the five (5) days prescribed. If the mother or other informant does not verify the accuracy of the personal data entered thereon within the prescribed five (5) days, the birth certificate shall be filed without verification.

Sections 9.a, 9.d, and 9.e are revised. Sections 9.b and 9.c remain the same.

a. The birth of an infant of unknown parentage shall be filed on a certificate of live birth by the person assuming custody of the child, or if an institution has assumed custody, by the person in charge of the institution or his or her designated representative. The certificate shall be filed with the county registrar of the county where the child is found within five (5) days, or as otherwise directed by the State Registrar. The certificate shall have Afoundling registration≡ clearly marked in the top margin and contain the following information:

1. the date and place of finding;
2. sex, color or race and approximate age of the child;
3. name and address of the persons or institution with whom the child has been placed for care;
4. name given to the child by the custodian of the child; and
5. other data required by the State Registrar.

d. A certificate filed under this section shall constitute the certificate of birth for the infant.

e. If the child is identified and a certificate of birth is found or obtained, any certificate filed under this section shall be sealed and filed and may be opened only by order of a court of competent jurisdiction.

Section 10 is revised to read:

Section 10 Delayed Registration of Birth

a. The registration of a birth after the time prescribed for filing but within four (4) years from the date of birth shall be filed on the standard form of live birth certificate in the manner prescribed in Section 8 of these Regulations. Such certificate filed after the first birthday shall be marked ADelayed≡.

In any case where birth occurred without medical attendance or newborn care and the mother received no prenatal care, the State Registrar may require additional evidence in support of the facts of birth.

b. All births filed four (4) or more years after the date of birth are to be filed on a special Adelayed certificate of birth≡ form adopted by the State Registrar.

c. Any person born in this State and whose birth is not recorded in this State, his or her parent or guardian, may file a delayed certificate of birth with the State Registrar, subject to the procedures and requirements established by these Regulations and instructions issued by the State Registrar.

122 FINAL REGULATIONS

d. Each delayed certificate of birth shall be signed and sworn to before an official authorized to administer oaths by the person whose birth is to be filed if such person is of legal age and is competent to sign and swear to the accuracy of the facts stated therein; otherwise, the certificate shall be signed and sworn to by one of the parents or the guardian.

e. No delayed certificate of birth shall be filed for a deceased person.

Section 11.d is revised to read:

d. The full name of the father; except that if the mother was not married to the father of the child at the time of birth, the time of conception or anytime in between, the name of the father shall not be entered on the delayed certificate unless the child has been adopted or legitimated, or paternity has been determined by the court or a paternity acknowledgment accompanies the establishment of the delayed certificate.

Section 13 is revised to read:

Section 13 Documentary Evidence - Acceptability

All documents submitted in evidence must have been executed at least ten (10) years prior to the date of application. Provided that for applicants under the age of twelve (12), all documents must be at least five (5) years old. The State Registrar may establish a priority of best evidence.

Section 14 is revised to read:

Section 14 Abstraction and Certification by the State Registrar of Vital Statistics

a. The State Registrar, or his or her designated representative, shall abstract on the delayed certificate of birth, a description of each document submitted to support the facts shown on the delayed birth certificate. This description shall include:

1. The title or description of the document.
2. The name and address of the custodian of the document.
3. The date of the original filing of the document being abstracted.
4. The information regarding the birth facts contained in the document.

All documents submitted in support of the delayed birth registration shall be returned to the applicant after review and abstraction.

- b. The State Registrar, or his or her designated representative shall certify:
1. That no prior birth certificate is on file for the person whose birth is to be recorded;
 2. That he or she has reviewed the evidence submitted to establish the facts of birth.
 3. That the abstract of the evidence appearing on the delayed certificate of birth accurately reflects the nature and content of the document.

Section 16.c is revised to read:

c. The data necessary to locate the existing certificate and the data necessary to complete the new certificate shall be submitted to the State Registrar on forms furnished or approved by him or her.

Section 18 is revised to read:

Section 18 Death Registration

a. A death certificate for each death which occurs in this State shall be filed with the county registrar of the county in which the death occurred within five (5) days after such death, or as otherwise directed by the State Registrar, and shall be filed by such registrar if it has been completed and filed in accordance with this section.

1. If the place of death is unknown but the body is found in this State, the death certificate shall be completed and filed in accordance with this section. The place where the body is found shall be shown as the place of death. If the date of death is unknown, it shall be determined by approximation.

2. When death occurs in a moving conveyance in the United States and the body is first removed from the conveyance in this State, the death shall be filed in this State and the place where it is first removed shall be considered the place of death. When death occurs in a moving conveyance while in international waters or air space or in a foreign country and the body is first removed from the conveyance in this State, the death shall be filed in this State but the certificate shall show the actual place of death insofar as can be determined.

b. The funeral director or person acting as such who first assumes the custody of a dead body shall file the death certificate. He or she shall obtain the personal data from the next of kin or the best-qualified person or source available. He or she shall obtain the medical certification of cause of death as provided in these Regulations.

c. The medical certification shall be completed and returned to the funeral director within forty-eight (48) hours after death by the physician in charge of the patient's care for the illness or condition which resulted in death, except when inquiry is required by medical examiner or coroner. In the absence of said physician or with his or her approval, the certificate may be completed by his or her associate physician, the chief medical officer of the institution in which death occurred or by the pathologist who performed an autopsy upon the decedent.

d. When death occurs more than ten (10) days after the decedent was last treated by a physician, or if the cause of death appears to be other than the illness or condition for which the deceased was being treated or if inquiry is required by Title 17 of the Code of Laws of South Carolina, 1976, as amended, the case shall be referred to the medical examiner or coroner for investigation to determine and certify the cause of death. If the medical examiner or coroner determines that the case does not fall within his or her jurisdiction, he or she shall within twenty-four (24) hours refer the case back to the referring physician for completion of the medical certification.

e. When inquiry is required by Title 17 of the Code of Laws of South Carolina, 1976, as amended, the medical examiner or coroner shall determine the cause of death and shall complete the medical certification within forty-eight (48) hours after taking charge of the case.

f. If the cause of death cannot be determined within forty-eight (48) hours after death, the medical certification shall be entered as pending, and the physician, medical examiner or coroner shall submit a supplemental report to the State Registrar on a form furnished by or approved by him or her. The supplemental report shall be made a part of the death certificate.

g. When a death is presumed to have occurred within this State but the body cannot be located, a death certificate may be prepared by the State Registrar upon receipt of an order of a court of competent jurisdiction,

124 FINAL REGULATIONS

which shall include the finding of facts required to complete the death certificate. Such a death certificate shall be marked APresumptive≡ and shall show on its face the date of filing and shall identify the court and the date of the decree.

Sections 19.a.1 and 19.a.2 are revised to read:

1. If the attending physician, medical examiner, or coroner, at the time of death and the attending funeral director or person who acted as such are available to complete the certificate of death, it may be completed without additional evidence and filed with the State Registrar.

2. In the absence of the attending physician or medical examiner, coroner and/or funeral director or person who acted as such, the certificate may be filed by the next of kin of the deceased and shall be accompanied by an affidavit of the person filing the certificate swearing to the accuracy of the information on the certificate and two (2) documents which identify the deceased and his or her date and place of death.

Section 20 introductory paragraph is revised. Sections 20.a.1 and 20.a.2 remain the same:

Section 20 Institution May Assist in Preparation of Certificate

a. When a death occurs in an institution and the death is not under the jurisdiction of the medical examiner or coroner, the person in charge of such institution, or his or her designated representative, may where feasible and cause of death is known, aid in the preparation of the death certificate as follows:

Sections 21.a.1 and 21.a.3 are revised. Sections 21.a.2, 21.a.4, 21.b, 21.c and 21.d remain the same.

1. When a dead fetus is delivered in an institution, the person in charge of the institution or his or her designated representative shall prepare and file the report.

3. When the place of fetal death is unknown, a fetal death report shall be filed in the county in which the dead fetus was found or as otherwise directed by the State Registrar within five days after the dead fetus was found.

Section 22.a is revised to read:

a. When an abortion is performed in a hospital, clinic or other institution, the person in charge of the institution or his or her designated representative shall complete the report on behalf of the performing physician and file it with the State Registrar within the time prescribed by law.

Section 23.b is revised to read:

b. In cases where a body is not released for disposition within seventy-two (72) hours after death, the subregistrar or coroner shall complete a Burial-Removal-Transit permit with the exception of the funeral home information and signature of the funeral director and forward the county health department=s copy to the county health department. The funeral director or representative shall sign the permit and obtain his or her copy when he or she assumes custody of the body.

Section 25 is revised to read:

Section 25 Removal of Body

- a. Before taking charge of a dead human body, the funeral director or person acting as such shall:
1. contact the attending physician and receive assurance from him or her that death is from natural causes and that the physician will assume responsibility for certifying to the cause of death; or
 2. contact the medical examiner or coroner if the case comes within his or her jurisdiction and receive authorization from him or her to remove the body.

Section 26 is revised to read:

Section 26 Incomplete Certificate

a. If the funeral director is unable to obtain the personal information about the deceased within the prescribed time period, the funeral director shall file a death certificate form completed as far as possible. As soon as possible, but in all cases within thirty (30) days, a supplemental report shall be filed with the county registrar, or as otherwise directed by the State Registrar, providing the information missing from the original certificate.

b. If missing or additional information is required of a medical officer or coroner for the cause of death section of a death certificate, the medical officer or coroner shall provide the information as soon as possible but in all cases within thirty (30) days from receipt of the State Registrar's request for such information. Provided, however, that when the information is not available within the thirty day period, the medical officer or coroner shall advise the State Registrar in writing or by other means as prescribed by the State Registrar that the information is not available and indicate the reason for the delay. Thereafter, the medical officer or coroner shall provide the information as soon as possible. Such information shall be provided on a Supplemental Report form prescribed by the State Registrar.

Section 30 is revised to read:

Section 30 Correction of Minor Errors on Birth and Death Certificates During First Year

Correction of obvious errors, transposition of letters in words of common knowledge, or omissions on certificates may be made by the State Registrar within the first year after the date of birth or date of death either upon his or her own observation or query or upon request of a parent or legal guardian in the case of a birth certificate or, the informant or funeral director in the case of a death certificate. When such additions or minor corrections are made by the State Registrar, a notation as to the source of the information, together with the date the change was made and the initials of the authorized agent making the change, shall be made on the certificate in such a way as not to become a part of any certification issued. The certificate is not to be marked Amended.

Section 32 is revised to read:

Section 32 Addition of Given Names after Registration

- a. If the registrant has not passed his or her seventh (7th) birthday, a signed affidavit must be received from:
1. both parents, or
 2. the mother in the case of a child born out of wedlock, or
 3. the father in the case of the death or incapacity of the mother, or
 4. the mother in the case of the death or incapacity of the father, or
 5. the guardian or agency having legal custody of the registrant.

126 FINAL REGULATIONS

b. If the registrant has passed his or her seventh (7th) birthday, in addition to the affidavit set forth in Section 32 (a), one (1) or more items of documentary evidence must be submitted to substantiate the name being added.

Section 33 is revised to read:

Section 33 Medical Items

All items in the medical certification or of a medical nature may be corrected only upon receipt of a signed statement or an approved electronic notification from those responsible for completion of the entries involved. The State Registrar may, at his or her discretion, require documentary evidence to substantiate the requested correction.

Section 35 is revised to read:

Section 35 Evaluation of Evidence

The State Registrar shall evaluate the evidence submitted in support of any correction and when he or she finds reason to question its validity or adequacy he or she may reject the amendment and shall advise the applicant of the reasons for this action.

Section 37 introductory paragraph is revised to read:

Section 37 Legal Changes

a. Upon receipt of a certified copy of a court order changing the birth record of a person born in this State and upon request of such person or his or her parent, guardian, or legal representative, the State Registrar shall record the changes by:

Section 38 is revised to read:

Section 38 Preservation of Records

To preserve original documents, the State Registrar of Vital Statistics is authorized to prepare a typewritten, photographic, or other reproductions of original records and files in his or her office. Such reproductions when certified by him or her shall be accepted as the original record.

Section 39 introductory paragraph is revised to read:

Section 39 Disclosure of Records

a. For the purpose of securing information or obtaining certified copies of vital records, the term Alegal representative≅ shall include an attorney, physician, funeral director, insurance company official, or other agent representing that he or she is acting on behalf of the registrant or his or her family.

Section 39.f is added to read:

f. No data shall be furnished from Vital Statistics records for research purposes until such request is approved by the State Registrar.

Section 40.b is revised to read:

Section 40 Certified Copies

b. When a certified copy is issued, each certification shall contain a statement certifying that the facts are the true facts recorded in the issuing office, the date issued, the name of the issuing officer, the registrar's signature or an authorized facsimile thereof, and the seal of the issuing office. Each copy issued shall show the date of filing and copies issued from records marked ADelayed≅, AAmended≅, or ACourt Order≅ shall be similarly marked and show the effective date.

Delete Section 40.c:

c. No data shall be furnished from Vital Statistics records for research purposes until such request is approved by the State Registrar.

Sections 41.c and 41.d are revised to read:

c. A funeral director, embalmer, or other person who removes from the place of death, or transports, or finally disposes of a dead body or fetus, in addition to filing any certificate or other form required by the Law or these Regulations, shall keep a record which shall identify the body, and information pertaining to his or her receipt, removal and delivery of such body as may be prescribed by the State Registrar.

d. Records maintained under this Section shall be retained for a period of not less than twenty-five (25) years and shall be made available for inspection by the State Registrar or his or her representative upon demand.

Section 42 is revised to read:

Section 42 Duties to Furnish Information Relative to Vital Events

Any person having knowledge of the facts shall furnish such information as he or she may possess regarding any birth, death, fetal death, marriage or divorce upon demand of the State or County Registrar.

Fiscal Impact Statement:

There will be no increased costs to the State or its political subdivisions as a result of the proposed changes to this regulation. The Division of Vital Records receives no state appropriations and has operated solely from the funding received through the certification of vital events and the provision of related data.

Statement of Need and Reasonableness:

128 FINAL REGULATIONS

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

DESCRIPTION OF REGULATION: R.61-19, *Vital Statistics*

This amendment of R.61-19 will ensure that birth, death, and fetal death data captured is in compliance with the new standard models adopted by the National Center for Health Statistics (NCHS) for implementation January 1, 2004.

Statutory Authority: The legal authority for the regulation is S.C. Code Section 44-63-10 *et seq.*, 1976 Code of Laws and Supplement.

Plan of Implementation: Upon approval by the General Assembly and publication as a final regulation in the State Registrar, this amendment will be implemented as are other regulation.

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

In order to stay comparable with other state systems and to ensure a viable system of vital records in the electronic age, the DHEC Division of Vital Records needs to amend current regulation governing the registration and certification system of births, deaths, fetal deaths, marriages, divorces and annulments, and induced terminations of pregnancy. The current regulation was adopted by the DHEC Board on September 13, 1977, with subsequent amendments approved on May 22, 1981, June 23, 1989 and July 01, 1998. Today, virtually all vital events are prepared on paper forms, signed and then filed with vital records offices. Most states provide electronic birth certificate systems for key-entry at hospital and birth centers, but the result is generally a paper certificate plus an electronic file. All death and fetal death certificates are currently filed on paper. In the near future, certificates will be largely >paperless=, with the data submitted electronically, and certified copies of records printed only when necessary. This will result in higher quality of data and less reliance on a labor-intensive system. The vital registration and statistical system of the United States exemplifies cooperation between Federal and State Government at its best. Even though the legal responsibility for the registration of vital events rests with the individual States, the States and the National Center for Health Statistics (federal partner) work together to build a uniform system that produces records to satisfy the legal requirements of individuals and their families and also to meet statistical and research needs at the local, State, and national levels. The cooperation includes the development and promotion of standard certificates and reporting forms, training and quality control programs, and model legislation.

The 1992 Model State Vital Statistics Act and Regulation is the 5th revision. The Model Act and Regulation provides detailed guidance to State Registrars of vital statistics. The Model Act and Regulations serve to promote uniformity among States in definitions, registration practices, disclosure and issuance procedures, and in may other functions that comprise a State system of vital statistics.

Once approximately every ten years, the National Center for Health Statistics (NCHS) adopts a new standard model of certain certificates. NCHS, once they adopt the model, forwards the model to the states for their review and adoption for their respective states. The philosophy of the standard certificates/reports to be implemented January 2004, is based on an electronic process to register vital events, not to design a word processing package to complete a paper document. A major goal of the 2004 revision is to easily incorporate technological advances, such as the use of electronic signatures, in records and information management.

Without clarifying language throughout R.61-19, the Division of Vital Records will not have the statutory authority to move forward with modifications to ensure compliance with the federal requirements for capturing vital event data for South Carolina. The proposed changes will bring R.61-19 in-line with the 1992 Model State Vital Statistics Act and Regulation from the Center for Disease Control and Prevention/NCHS.

DETERMINATION OF COSTS AND BENEFITS: There will be no increased costs to the state, its political subdivisions, or to the regulated community as a result of the changes on these regulations. The Division of Vital Records receives no state appropriations and operates solely from the funding received through the certification of vital events and the provision of related data.

EFFECTS ON ENVIRONMENT AND PUBLIC HEALTH: This amendment is intended to ensure the uninterrupted documentation and timely dissemination of vital records, to maintain the current level of customer service, to preserve the integrity of the vital records program, and to support required state and federal initiatives. Failure to approve this amendment of R.61-19 will result in a decrease in overall operation and level of services and may place the Department in violation of law and/or contractual agreements.

DETRIMENTAL EFFECT ON ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED: If R.61-19 is not amended to be in compliance with Model State Vital Statistics and Regulation (NCHS), the Division of Vital Records will not be able to utilize emerging technology that will continue to impact the vital statistics system of South Carolina. The failure to be in compliance with the 1992 Model will seriously jeopardize our ability to meet deadlines necessary to conform to federal contracts and mandated state and federal initiatives. Resources are already being strained to maximum levels to meet federal and state demands for data to be transmitted in a quicker time frame. Funds provided by these contracts will be affected if we cannot continue to comply. Our vital records program will become stagnant if authority is not established to keep South Carolina in the mainstream.

130 FINAL REGULATIONS

Document No. 2721

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

CHAPTER 61

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

R.61-62.5, Standard Number 3, Waste Combustion and Reduction

Synopsis:

Amendment of R.61-62.5, Standard Number 3, *Waste Combustion and Reduction*, establishes consistent emission limits for industrial and utility boilers which burn coal in addition to waste fuel. This amendment also clarifies the exemption for total reduced sulfur control devices that burn other waste fuels and to allow ash storage at air curtain incinerators in a manner consistent with R.61-107.12, *Solid Waste Management Regulations*. In addition, the periodic testing section was revised to ensure that compliance testing continues to be conducted every three years. This amendment also adds an exemption on-a-case by case basis for renewable energy resources and/or control devices that comply with federal Maximum Achievable Control Technology (MACT) standards. Several typographical and/or punctuation errors which resulted from prior publishing errors have been corrected. See Summary of Revisions and Statement of Need and Reasonableness provided herein.

Discussion of Revisions:

| <u>SECTION CITATION</u> | <u>EXPLANATION OF CHANGE</u> |
|--|--|
| Section I.B | Delete sentence for clarification. |
| Section I.B | Update reference to 40 CFR 60, Subpart Cb. |
| Section I.D and I.E | Update reference to Standard 3.1 to reflect change in title. |
| Section I.J | Clarify current exemption for total reduced sulfur devices. Add exemption for renewable energy resources and for emission units and/or control devices that comply with the requirements of federal MACT standards. |
| Section III.E.4, Table 1 | Correct typographical error. |
| Section III.F.2.b | Update reference to Standard 7. |
| Section III.F.4 | Update reference to 40 CFR 266. |
| Section III.F.5.b | Update reference to Standard 7. |
| Section III.G.4.h | Amend language to allow ash storage at these facilities in order to be consistent with R.61-107.12, <i>Solid Waste Management</i> . |
| Section III.I.2 and 3, Section III.J.6.c, Section III.L.5.c Tables IV and V | Change "lbs/MM BTU" to "lbs/10 ⁶ BTU" for consistency with EPA documents. |
| Section III.J.1, Table III | Add requirements of Option 3 of the Guidance published on June 25, 1999 regarding industrial and utility boilers which burn coal in addition to waste. |

| | |
|--|---|
| Section III.J.1, Table III | Correct publishing error in footnote. Add footnote specifying that source testing is not required for waste with no metals or HCl. |
| Section III.J.6.c, Section III.L.5.c Tables IV and V | Clarify “Waste Firing Rate.” |
| Section III.K. | Clarify that non-industrial boilers do not include utility boilers. |
| Section VII.A | Delete extraneous brackets. |
| Section VII.B.1.a and b | Update wording to reflect changes in technology. |
| Section VII.B.4.b, 5.b and 6.b | Change citation to correct a prior publishing error. |
| Section VIII.B | Change the frequency of testing requirement to reflect changes in the Hazardous Waste Maximum Achievable Control Technologies (HW MACT) standards. Specifically, those facilities subject to the HW MACT will be required to continue stack testing every three years to prevent the possible deterioration of the ambient air quality. |
| Section VIII.F | Change the configuration of formula to correct a typographical error only; the content and meaning of formula remains the same. |

Instructions: Amend R.61-62.5, Standard 3, pursuant to each individual instruction provided with the text below:

Text: R.61-62.5, Standard 3, Waste Combustion and Reduction

Section I.B is amended to read:

B. Municipal Waste Combustion facilities constructed, reconstructed or modified on or before September 20, 1994, with a unit capacity greater than 250 tons per day of Municipal Solid Waste shall be subject to 40 CFR 60, Subpart Cb, Emission Guidelines and Compliance Schedules for Municipal Waste Combustors, promulgated December 19, 1995, 60 FR 65415, and amended August 25, 1997, 62FR 45119 and 45125 and the South Carolina Air Quality Implementation Plan. For the purposes of this Standard, the definitions contained in the various provisions of 40 CFR part 60, adopted herein, shall apply except that the term “Administrator” when used in 40 CFR part 60, shall mean the Department. These Municipal Waste Combustors shall also be subject to any provision of this Standard that would impose a more restrictive emission limit or requirement.

Section I.D is amended to read:

D. Hospital/medical/infectious waste incinerators are subject to Standard Number 3.1 of this Regulation.

Section I.E is amended to read:

132 FINAL REGULATIONS

E. Hospital/medical/infectious waste incinerators burning other waste in addition to medical waste are subject to the requirements of this Standard that are more restrictive than those found in Standard Number 3.1 for the waste being burned.

Section I.J is amended to read:

J. Exemptions

1. Industrial furnaces and boilers at Pulp and Paper facilities burning only black liquor, only total reduced sulfur compounds (TRS), or only black liquor and/or TRS Compounds and/or virgin fuel are not subject to this Standard. Also, total reduced sulfur control devices burning only gaseous TRS and virgin fuel are not subject to this Standard. Gaseous process streams containing TRS Compounds that are regulated in accordance with Section IX of regulation 61-62.5, Standard 4, Emissions from Process Industries and/or 40 CFR part 60, subpart BB, Standards of Performance for Kraft Pulp Mills, are also not subject to this Standard. Exemptions for additional process streams will be considered on a case by case basis. Additions to black liquor for the purpose of waste disposal shall not be exempt from this Standard.

2. Facilities utilizing a renewable energy resource burned for energy recovery may request an exemption from this standard by: 1) submitting a site-specific chemical analysis of the renewable energy resource and/or source testing results to the Department for review, and 2) providing additional documentation as necessary so that the Department can confirm that the exemption will be protective of human health and the environment. The Department reserves the right to deny a request for an exemption to Standard 3 for any renewable energy resource(s) that does not satisfy the above conditions.

3. A facility with an emission unit and/or control device that complies with all the requirements of an applicable Maximum Achievable Control Technology (MACT) standard under 40 CFR part 63, including the testing and reporting requirements, may request an exemption from this Standard. Facilities requesting such an exemption shall provide any documentation as necessary in order for the Department to make a determination. Upon review of such a request, the Department may grant an exemption from this Standard if it determines that compliance with the applicable MACT standard(s) would be as protective of human health and the environment as the requirements of this Standard. Any new waste and/or process stream must be evaluated by the Department in order to maintain this exemption. Also, any operational change that may impact emissions from the waste must be evaluated by the Department in order to maintain this exemption.

Section III.E.4, Table 1 is amended to read:

TABLE I

| Material | Emission Limit ^a |
|---------------|---|
| Nickel (Ni) | 6.0×10^{-3} lb / 10^6 BTU total heat input |
| Cadmium (Cd) | 1.0×10^{-4} lb / 10^6 BTU total heat input |
| Chromium (Cr) | 5.0×10^{-4} lb / 10^6 BTU total heat input |
| Arsenic (As) | 2.5×10^{-4} lb / 10^6 BTU total heat input |
| Lead (Pb) | 5.0×10^{-3} lb / 10^6 BTU total heat input |

a. The total heat input value shall include the BTU from the waste and virgin fuel used for production. Furthermore, the total heat input value shall not exceed the BTU used to affect the combustion of the waste and shall not include any BTU input from auxiliary burners located outside of the primary combustion chamber such as those found in secondary combustion chambers, tertiary combustion chambers or afterburners unless those auxiliary burners are fired with waste. In the case where waste is fired in the auxiliary burners located outside of the primary combustion chamber, only the BTU value of the fuel for the auxiliary burner which is from waste shall be added to the total heat input value.

Section III.F.2.b is amended to read:

b. new sources - "Best Available Control Technology" (BACT) as defined in Regulation 61-62.5, Standard Number 7, (b)(12).

Section III.F.4 is amended to read:

4. Cement Kilns burning municipal solid waste may exceed the values listed in Table II provided they do not exceed 20 ppmv total hydrocarbons (THC) hourly average, as propane (as determined by EPA reference method 25A or from Continuous Emission Monitors (CEMs) meeting Performance Specification 2.2 of 40 CFR 266 Appendix IX), measured at the kiln outlet corrected to 7 % O₂, both measured on a dry basis.

Section III.5.b is amended to read:

b. new sources - 30 ppmv, hourly average, corrected to 7% O₂, both measured on a dry basis; or the facility shall install emission controls that, on the date of the permit to construct, meet the criteria of BACT as defined in Regulation 61-62.5, Standard Number 7, (b)(12).

Section III.G.4.h is amended to read:

h. All ash shall be stored in compliance with the requirements of the South Carolina Solid Waste Management Regulations, 25A SC Code Ann. R.61-107.12.

Section III.I.2 and 3 are amended to read:

2. Particulate Matter Emissions shall not exceed 0.5 lbs/10⁶ BTU total heat input. The total heat input value from waste and virgin fuel used for production shall not exceed the BTU²s used to affect the combustion of the waste and shall not include any BTU input from auxiliary burners located outside of the primary combustion chamber such as those found in secondary combustion chambers, tertiary combustion chambers or afterburners unless those auxiliary burners are fired with waste. In the case where waste is fired in the auxiliary burners located outside of the primary combustion chamber, only the BTU value of the fuel for the auxiliary burner which is from waste shall be added to the total heat input value.

3. Industrial Incinerators with a total design capacity of less than 1x10⁶ BTU/hr including auxiliary devices used to recondition parts shall be exempt from all requirements of this Standard except for the following:

a. Opacity shall not exceed 20%.

b. Records documenting the contaminant being removed and possible emissions from the process shall be maintained and made available for Department review.

Section III.J.1, Table III is amended to read:

TABLE III^b

134 FINAL REGULATIONS

| Material | Emission Limit ^a |
|-------------------------|--|
| Nickel (Ni) | 6.0 x 10 ⁻³ lb / 10 ⁶ BTU total heat input |
| Cadmium (Cd) | 1.0 x 10 ⁻⁴ lb / 10 ⁶ BTU total heat input |
| Chromium (Cr) | 7.4 x 10 ⁻⁴ lb / 10 ⁶ BTU total heat input |
| Arsenic (As) | 1.7 x 10 ⁻³ lb / 10 ⁶ BTU total heat input |
| Lead (Pb) | 5.0 x 10 ⁻³ lb / 10 ⁶ BTU total heat input |
| Hydrochloric Acid (HCl) | 0.45 lb / 10 ⁶ BTU total heat input |

^a The total heat input value shall include the BTU from the waste and virgin fuel used for production. Furthermore, the maximum total heat input value to be used in determining the emission limitations shall be limited to the BTUs necessary to maintain production. The BTU from other sources such as afterburners shall not be considered in determining this total heat input value unless those auxiliary burners are fired with waste. In the case where waste is fired in the auxiliary burners located outside of the primary combustion chamber, only the BTU value of the fuel for the auxiliary burner which is from waste shall be added to the total heat input value.

^b Source testing for metals or HCl will not be required at facilities burning waste with no metals or chlorine in the waste. Analysis showing these constituents to be nondetectable by reference method in the waste would be an alternative method for determining compliance with emission limits as allowed by R.61-62.5, Standard 3, Section VIII(A).

Section III.J.6.c, Table IV is amended to read:

c. Records of the material being burned (i.e. gallons per month or tons per month) and its firing rate must be kept and made available to the Department upon request.

TABLE IV

| Boiler Size (1x10 ⁶ BTU/hr) | Waste Firing Rate (heat input of waste/ design heat input of unit) |
|---|---|
| >10 – 50 | 0.1 |
| >50 | 0.06 |

Section III.K. is amended to read:

K. Non-industrial Boilers

Regardless of size, non-industrial boilers, with the exception of utility boilers, are restricted to the use of virgin fuels and/or spec. oil.

Section III.L.5.c, Table V is to read:

5. Sources burning small quantities of waste that is generated by the owner/operator and is burned as described in Table V below, are exempt from the requirements of this Standard except as follows:

- a. There must be a valid permit for the furnace which specifies the exact waste to be burned.
- b. Analysis may be required to prove that the material to be burned is one of the substances authorized by the permit.
- c. Records of the material being burned (i.e. gallons per month or tons per month) and its firing rate must be kept and made available to the Department upon request.

TABLE V

| Furnace Size (1x10 ⁶ BTU/hr) | Waste Firing Rate (heat input of waste/ design heat input of unit) |
|--|--|
| >10 – 50 | 0.1 |
| >50 | 0.06 |

Section VII.A is amended to read:

A. Provisions of this Section or other procedures approved by the Department, unless superseded by Federal air regulations, are applicable to monitoring devices required under Section VI or required by permit conditions to establish compliance with this Standard. The daily zero and span calibrations for all categories of continuous emission monitors shall comply with the requirements of 40 CFR 60.13(d)(1) and (d)(2) unless superseded by Federal air regulations.

Section VII.B.1.a(iii) is amended to read:

(iii) Method: Calibrate using National Institute of Standards and Technology (NIST) traceable methods and manufacturer’s specifications or other methods approved by the Department.

Section VII.B.1.b is amended to read:

b. Quality Assurance

Conduct weekly single or multipoint reference checks against NIST traceable thermometers/thermocouples or other methods approved by the Department, and recalibrate according to paragraph B.1.a if this difference is greater than 2.5%.

Section VII.B.4.b is amended to read:

Challenge the monitor with Low (25% of instrument span) and mid (50% of instrument span) EPA Protocol Number 1 or NBS traceable audit gases or challenge the monitor as prescribed in 40 CFR Part 60, Appendix F, Section 5.1.2. Recalibration according to paragraph B.4.a. is required if the quarterly audit deviates by more than ± 15% from the audit gas concentrations.

NOTE: Sufficient time for instrument stabilization must be allowed when challenging the monitor with audit gases.

136 FINAL REGULATIONS

Section VII.B.5.b is amended to read:

Challenge the monitor with Low (25% of instrument span) and mid (50% of instrument span) EPA Protocol Number 1 or NBS traceable audit gases or challenge the monitor as prescribed in 40 CFR Part 60, Appendix F, Section 5.1.2. Recalibration according to paragraph B.5.a. is required if the quarterly audit deviates by more than $\pm 15\%$ from the audit gas concentrations.

NOTE: Sufficient time for instrument stabilization must be allowed when challenging the monitor with audit gases.

Section VII.B.6.b is amended to read:

Challenge the monitor with Low (25% of instrument span) and mid (50% of instrument span) EPA Protocol Number 1 or NBS traceable audit gases or challenge the monitor as prescribed in 40 CFR Part 60, Appendix F, Section 5.1.2. Recalibration according to paragraph B.6.a. is required if the quarterly audit deviates by more than $\pm 15\%$ from the audit gas concentrations.

NOTE: Sufficient time for instrument stabilization must be allowed when challenging the monitor with audit gases.

Section VIII.B is amended to read:

B. Unless more frequent testing is required by an applicable Federal requirement, sources subject to a more restrictive requirement in RCRA or a promulgated Maximum Achievable Control Technology (MACT) standard shall be excluded from the testing frequency requirements of Section VIII provided any additional parameters required by this Section (eg. Nickel) are tested and compliance demonstrations are performed at least every three years. Compliance demonstrations must be performed with a maximum frequency of three years for all pollutants listed in Section VIII, as applicable. Spiking for metals and HCl are not required for these periodic retests, but sources must conduct these tests on their normal highest metals and HCl containing waste streams.

Section VIII.F is amended to read:

F. POHC DRE shall be determined by the following equation using mass emissions rates:

$$\text{DRE} = [(\text{Inlet Organics} - \text{Stack Outlet Organics}) \div \text{Inlet Organics}] \times 100$$

Preliminary Fiscal Impact Statement:

The Department estimates no additional cost will be incurred by the state or its political subdivisions as a result of the promulgation, approval, and implementation of this amendment.

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: Amendment to R.61-62.5, Standard Number 3, Waste Combustion and Reduction.

Purpose: This amendment of R.61-62.5, Standard Number 3, Waste Combustion and Reduction, establishes consistent emission limits for industrial and utility boilers which burn coal in addition to waste fuel. This amendment also clarifies the exemption for total reduced sulfur control devices that burn other waste fuels and to allow ash storage at air curtain incinerators in a manner consistent with R.61-107.12, Solid Waste Management

Regulations. In addition, the periodic testing section was revised to ensure that compliance testing continues to be conducted every three years. This amendment also adds an exemption on-a-case by case basis for renewable energy resources and/or control devices that comply with federal Maximum Achievable Control Technology (MACT) standards. Several typographical and/or punctuation errors which resulted from prior publishing errors have been corrected.

Legal Authority: The legal authority for the Air Pollution Control Regulations and Standards, R.61-62.5, Standard Number 3, is section(s) 48-1-10 et seq., S.C. Code of Laws.

Plan for Implementation: These amendments will take effect upon approval of the General Assembly and publication in the State Register.

DETERMINATION OF NEED AND REASONABLENESS OF THE REGULATIONS BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

On June 25, 1999, a revision to Regulation 61-62.5, Standard 3, Waste Combustion and Reduction, was published in the State Register. The Department undertook this revision for the purpose of clarifying portions of the regulation, not to add new requirements or make the regulation any more stringent. However, as the regulation was in the final steps of being promulgated, several industry groups brought forward concerns about the interpretation of certain aspects of the regulation. Specifically, when the emission limitations for industrial and utility boilers were converted from lb/1000 gallons of liquid waste or waste fuel being burned to lb/10⁶ BTU total heat input, some facilities that burned coal in addition to waste fuel found that the metals inherent to coal would possibly preclude them from meeting the emission limitations if the unit also combusted waste. To resolve this issue, the Department published a Notice of General Public Interest in the State Register on June 25, 1999 (Guidance Document). The Guidance Document established three options for determining emission limitations for industrial and utility boilers that burn coal and waste and stated that these options would be available to facilities until such time as the Department revised the regulation.

Thus, this current revision is necessary in order to incorporate one of the options from the Guidance Document as stated above and to clarify the emission limits for industrial and utility boilers. The Department has selected Option 3, which should not impose any more stringent requirements on the regulated community. Option 3 was chosen by the Department because it accommodates higher than expected emissions from facilities which choose to burn waste in addition to coal. This revision will also clarify the confusion concerning the requirements for ash storage at air curtain incinerators. These requirements are currently in conflict with other regulations, specifically Regulation 61-107.12, Solid Waste Management. In addition, the amendment is necessary in order to ensure that compliance testing continues to be conducted every three years. The current regulation allows facilities subject to the Resource Conservation and Recovery Act (RCRA) to test in accordance with the requirements specified in that regulation. However, new regulations will soon decrease that testing to every five years. Thus, this revision is necessary to ensure that the current testing schedule remains unchanged. Also, the exemption for renewable energy resources will support environmental beneficial project and the exemption on a case-by-case basis for emission units and/or control devices that comply with federal MACT standards will eliminate duplication with other regulations. Finally, typographic errors and other discrepancies will be corrected resulting in clearer more easily understood regulations.

DETERMINATION OF COSTS AND BENEFITS:

There will be no increased cost to the State or its political subdivisions resulting from these amendments nor will there be any increased cost to the regulated community as a result of these amendments. In light of the

138 FINAL REGULATIONS

fact that all industrial and utility boilers that burn waste and coal in South Carolina are already utilizing various control technologies to meet the emissions limitations contained the Guidance published on June 25, 1999, incorporating Option 3 will not impose any additional financial burdens. In addition, the other proposed changes stated in this document should not increase the current costs to industry.

UNCERTAINTIES OF ESTIMATES: None.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH: These amendments of Regulation 61-62.5, Air Pollution Control Regulations and Standards, Standard Number 3, will provide continued protection of the environment and public health. The amendments will also benefit the regulated community by clarifying the regulations and increasing their ease of use.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATIONS ARE NOT IMPLEMENTED:

Currently, the Department offers three compliance options in a guidance document for facilities that burn waste in addition to coal. These options can be confusing for the regulated community and may present an unreasonable amount of ambiguity in the Department's ability to enforce Standard 3. To eliminate this potential problem, the Department has incorporated only one of those options into regulation which will cause only minimal effects on the regulated community. Also, ambient air quality may be detrimentally affected if these facilities are allowed to conduct their compliance testing every five years instead of every three years as is the current requirement. The latter more restrictive compliance testing allows the Department and industry to detect increases in emissions faster and is therefore more protective of human health and the environment. The exemption for renewable energy resources will remove unnecessary regulatory burden that may otherwise discourage environmentally beneficial projects.

Document No. 2705
DEPARTMENT OF INSURANCE
CHAPTER 69

Statutory Authority: 1976 Code Sections 38-3-110; 38-38-550; 1-23-10 *et seq.*

69-15. South Carolina Deposits Required of Insurers

Synopsis:

The South Carolina Department of Insurance proposes to amend Regulation 69-15, South Carolina Deposits Required of Insurers. Pursuant to 2000 Act 259, fraternal benefit societies must comply with the requirements of Section 38-9-80 of the South Carolina Code of Laws. The amendment revises the regulation in order to accurately correspond with the changes made by Act 259.

Instructions:

Strike existing regulation 69-15 in its entirety and replace with the language provided.

Text:

69-15. South Carolina Deposits Required of Insurers.

Under S. C. Code Section 38-9-80 (1976), every domestic, foreign or alien insurance company, transacting or desiring to transact business in South Carolina is required to make deposits with the director or his designee in accordance with standards promulgated by him. The director or his designee is empowered to prescribe the

amounts required, within the limits set forth in the statute, and he is specifically authorized to subsequently increase or decrease the amount of deposit required of any particular insurer.

The amount which an insurer is required to deposit is related to its surplus as regards policyholders (capital and surplus for stock insurers or surplus for mutual, fraternal benefit societies and reciprocal insurers), as set forth in its most recent annual statement filed pursuant to S. C. Code Section 38-13-80 (1976). Such amount is to be determined in accordance with the following table:

| Surplus as Regards Policyholders | Market Value of Deposit |
|---|-------------------------|
| Under \$1,000,000 | \$200,000 |
| \$1,000,000 or more but less than \$3,000,000 | \$175,000 |
| \$3,000,000 or more but less than \$5,000,000 | \$150,000 |
| \$5,000,000 or more | \$125,000 |

The director or his designee may subsequently increase or decrease the amount of deposit required of an insurer depending upon particular circumstances, such as the current financial condition of the insurer in relation to its previous financial condition, the type or amount of business written by the insurer, the method of operation of the insurer, etc. The insurer will be notified of the amount of deposit it is required to make.

Fiscal Impact Statement:

No additional state funding is requested.

Document No. 2706
DEPARTMENT OF INSURANCE
 CHAPTER 69

Statutory Authority: 1976 Code Sections 38-3-110; 38-33-200; 1-23-10, et seq.

69-22. Health Maintenance Organizations

Synopsis:

The South Carolina Department of Insurance proposes to amend Regulation 69-22 regarding Health Maintenance Organizations. The amendment will revise Section II of the regulation related to License Requirements to reflect changes made to Section 38-33-90 by the passage of 2000 Act 312, specifically regarding annual statement and reports filing requirements. Subsections C and D will be deleted in their entirety.

Instructions:

In Section II of regulation 69-22, delete Subsections C and D in their entirety.

Text:

69-22. Health Maintenance Organizations

Section I. Definitions.

Unless the context otherwise requires, the following definitions shall apply as the terms are used in both this regulation and Chapter 33 of Title 38 of the 1976 South Carolina Code, as amended (the Health Maintenance Organization Act of 1987):

140 FINAL REGULATIONS

A. "Basic health care services" means emergency care, inpatient hospital and physician care, and outpatient medical services. "Basic health care services" does not include dental services, mental health services, or services for alcohol or drug abuse, although a health maintenance organization may at its option elect to provide these services in its coverage.

B. "Contractholder" means a person or entity consisting of employees or eligible persons which has entered into a group contract with a health maintenance organization for the provision of specified health care services to its eligible employees or eligible persons.

C. "Commissioner" means the Chief Insurance Commissioner.

D. "Copayment" or "deductible" means the amount specified in the evidence of coverage that the enrollee shall pay directly to the provider for covered health care services, which may be stated in either specific dollar amounts or as a percentage of the provider's usual or customary charge.

E. "Department" means the Department of Health and Environmental Control.

F. "Eligible dependent" means any member of a subscriber's family who meets the eligibility requirements set forth in Subsection D of Section III of this regulation.

G. "Emergency care services" means:

1. Within the service area: covered health care services rendered by affiliated or non-affiliated providers under unforeseen conditions that require immediate medical attention. Emergency care services within the service area shall include covered health care services from non-affiliated providers only when delay in receiving care from the health maintenance organization could reasonably be expected to cause severe jeopardy to the enrollee's condition.

2. Outside the service area: medically necessary health care services that are immediately required because of unforeseen illness or injury while the enrollee is outside the geographical limits of the health maintenance organization's service area.

H. "Enrollee" or "member" means an individual who is enrolled in a health maintenance organization.

I. "Evidence of coverage" means any certificate, agreement or contract issued to an enrollee setting out the coverage to which he is entitled.

J. "Group contract" means a contract for health care services which by its terms limits eligibility to members of a specified group.

K. "Health care services" means any services included in the furnishing to any individual of medical or dental care or hospitalization, or incident to the furnishing of such care or hospitalization, as well as the furnishing to any person of any and all other services for the purposes of preventing, alleviating, curing, or healing human illness, injury or physical disability.

L. "Health maintenance organization" means any person that undertakes to provide or arrange for basic health care services to enrollees for a fixed prepaid premium.

M. "Health professional" means any professional engaged in the delivery of health care services who is licensed, and practicing within the scope of such a license, where such licensing is required by state law.

N. "Hospital" means a duly licensed institution which provides general and specialized inpatient medical care. The term "hospital" shall not include a convalescent facility, nursing home, or any institution or part thereof which is used principally as a convalescent facility, rest facility, nursing facility, or facility for the aged.

O. "Individual contract" or "nongroup contract" means a contract for health care services issued to and covering an individual or a family.

P. "Medical necessity" or "medically necessary" means appropriate and necessary services as determined by any provider affiliated with the health maintenance organization which are rendered to an enrollee for any condition requiring, according to generally accepted principles of good medical practice, the diagnosis or direct care and treatment of an illness or injury and are not provided only as a convenience.

Q. "Out-of-area services" means the health care services that a health maintenance organization covers when its enrollees are outside of the service area.

R. "Person" means any natural or artificial person including but not limited to individuals, partnerships, associations, trusts, or corporations.

S. "Physician" means a duly licensed doctor of medicine or osteopathy practicing within the scope of such a license.

T. "Primary care physician" means a physician who supervises, coordinates, and provides initial and basic care to members; initiates their referral for specialist care and maintains continuity of patient care.

U. "Provider" means any physician, dentist, hospital, pharmacist, or other person properly licensed, where required, to furnish health care services.

V. "Service area" means the geographical area as approved by the Commissioner within which the health maintenance organization provides or arranges for health care services that are available and accessible to enrollees.

W. "Skilled nursing facility" means a facility that is operated pursuant to law and primarily engaged in providing, in addition to room and board accommodations, skilled nursing care under the supervision of a duly licensed physician.

X. "Subscriber" means the individual whose employment or other status, except for family dependency, is the basis for eligibility for enrollment in the health maintenance organization and who is in fact enrolled in the health maintenance organization.

Y. "Supplemental health care services" means any health care services other than basic health care services.

Section II. License Requirements.

A. Health Maintenance Organizations.

1. No person may undertake to provide or arrange for any basic health care service for a fixed prepaid premium in this State without first obtaining a certificate of authority from the Commissioner to transact business as a health maintenance organization.

2. No health maintenance organization chartered, organized and existing under the laws of the State will be licensed by the Commissioner unless it meets all requirements of law and this regulation and it maintains its records, accounts, home office and principal place of business in this State.

3. No health maintenance organization chartered, organized and existing under the laws of another state will be licensed by the Commissioner unless it meets all requirements of law and this regulation and the Commissioner has determined that:

- a. the applicant is registered as a foreign corporation to do business in this State;
- b. the applicant is subject to regulation of its financial condition in its state of domicile, including regular financial examination not less frequently than once every three years; and
- c. the applicant complies with such conditions as the Commissioner may prescribe with respect to the maintenance of books, records, accounts and facilities in this State.

B. Agents.

1. An "agent" means a person who is appointed or employed by a health maintenance organization and who engages in solicitation of membership in the health maintenance organization. The term "agent" does not include an employee of an employer, union or other contractholder to whom a master subscriber contract has been issued whose duties include enrolling members in the health maintenance organization on behalf of the employer, union or other contractholder.

2. No person may act as an agent on behalf of a health maintenance organization in this State unless he has been licensed by the Commissioner as an accident and health insurance agent for that health maintenance organization. No health maintenance organization may accept members solicited by, or otherwise transact business through, persons who are not licensed by the Commissioner as accident and health insurance agents for the health maintenance organization. Salaried employees of the health maintenance organization are exempt from licensing requirements.

Section III. Requirements for Contracts and Evidence of Coverage.

A. Each subscriber shall be entitled to a contract or evidence of coverage as approved by the Commissioner. A contract or evidence of coverage shall be delivered or issued for delivery to a subscriber or to the contractholder for delivery to the subscriber within a reasonable time after enrollment, but not more than thirty (30) days from the later of the effective date of coverage or the date on which the health maintenance organization is notified of enrollment.

B. Health Maintenance Organization Information.

142 FINAL REGULATIONS

1. The contract and evidence of coverage shall contain the name, address and telephone number of the health maintenance organization, and where and in what manner information is available as to how services may be obtained.

2. A toll-free or local phone number within the service area for calls, without charge to members, to the health maintenance organization's administrative office shall be made available and disseminated to enrollees to adequately provide telephone access for member services, problems or questions.

C. Entire Contract.

1. The contract shall contain a statement that the contract, all applications and any amendments thereto shall constitute the entire agreement between the parties.

2. No portion of the charter, bylaws or other document of the health maintenance organization shall be part of such a contract unless set forth in full in the contract or attached thereto.

D. Term of Coverage.

1. The contract shall contain the time and date or occurrence upon which coverage takes effect, including any applicable waiting periods, or describe how the time and date or occurrence upon which coverage takes effect is determined.

2. The contract shall contain the time and date or occurrence upon which coverage will terminate.

E. Eligibility Requirements.

1. The contract and evidence of coverage shall contain eligibility requirements indicating the conditions that must be met to enroll as a subscriber or eligible dependent, the limiting age for subscribers and eligible dependents including the effects of Medicare eligibility, and a clear statement regarding coverage of newborn children.

2. The definition of an eligible dependent shall as a minimum include:

- a. the spouse of the subscriber;
- b. an unmarried dependent child of the subscriber who has not reached age 19;
- c. an unmarried dependent child of the subscriber age 19 or over, who is both incapable of self support because of mental retardation, mental illness or physical incapacity which began before the child reached age 19, and chiefly dependent upon the subscriber for support and maintenance; or
- d. an unmarried dependent child of the subscriber age 19 through 22 who is attending a recognized college or university, trade or secondary school on a full-time basis.

3. The definition of a dependent child shall as a minimum include children who are:

- a. related to the subscriber as either a natural child, a legally adopted child, a stepchild, a foster child, or a child under legal guardianship; or
- b. any other child residing in the subscriber's household and who qualifies as a dependent of the subscriber or the subscriber's spouse under the United States Internal Revenue Code and federal tax regulations.

4. All contracts and evidences of coverage shall provide coverage for a newly-born child of the subscriber from the moment of birth. Medically diagnosed congenital defects and birth abnormalities shall be treated the same as any other illness or injury for which coverage is provided. The contract and evidence of coverage may require that notification of birth of a newborn child and payment of any required premium must be furnished to the health maintenance organization within thirty-one (31) days after the date of birth in order for such coverage to have become effective and to continue beyond such thirty-one (31) day period.

F. Benefits and Services within the Service Area. The contract and evidence of coverage shall contain a specific description of benefits and services available within the service area.

G. Emergency Care Services. The contract and evidence of coverage shall contain a specific description of benefits and services available for emergencies twenty-four (24) hours a day, seven (7) days a week, including disclosure of any restrictions on emergency care services. No contract or evidence of coverage shall limit the coverage of emergency services within the service area to affiliated providers only.

H. Out-of-Area Benefits and Services. The contract and evidence of coverage shall contain a specific description of benefits and services available out of the service area.

I. Copayments, Deductibles, Limitations and Exclusions. The contract and evidence of coverage shall contain a description of any copayments, deductibles, limitations or exclusions on the services, kind of services, benefits, or kind of benefits to be provided, including any copayments, deductibles, limitations or exclusions due to preexisting conditions, waiting periods or an enrollee's refusal of treatment.

J. Cancellation or Termination. The contract and evidence of coverage shall contain the conditions upon which cancellation or termination may be effected by the health maintenance organization or the subscriber.

K. Renewal. The contract and evidence of coverage shall contain the conditions for, and any restrictions upon, the subscriber's right to renewal.

L. Reinstatement. The contract and evidence of coverage shall contain the conditions for, and any restrictions upon, the subscriber's right to reinstatement.

M. Grace Period.

1. The contract and evidence of coverage shall provide for a grace period of not less than thirty-one (31) days for the payment of any premium except the first, during which coverage shall remain in effect if payment is made during the grace period.

2. During the grace period, the health maintenance organization shall remain liable for providing the services and benefits contracted for, the contractholder shall remain liable for the payment of the premium for the time coverage was in effect during the grace period, and the subscriber shall remain liable for any copayments or deductibles owed.

N. Claims. The contract and evidence of coverage shall contain procedures for filing claims that include:

1. any required notice to the health maintenance organization;
2. if any claim forms are required, how, when and where to obtain and submit them;
3. any requirements for filing proper proofs of loss;
4. any time limit on payment of claims;
5. notice of any requirement for resolving disputed claims including arbitration; and
6. a statement of restrictions, if any, on assignment of sums payable to the enrollee by the health maintenance organization.

O. Complaint System and Arbitration. The contract and evidence of coverage shall contain a description of the health maintenance organization's method for resolving enrollee complaints, incorporating procedures to be followed by the enrollee in the event any dispute arises under the contract, including any requirements for arbitration.

P. Conversion of Coverage.

1. The contract and evidence of coverage shall contain a conversion provision which provides that each enrollee has the right to convert coverage to an individual health maintenance organization contract or to a policy of health insurance issued by a licensed insurer on a form previously approved by the Chief Insurance Commissioner in the following circumstances:

- a. upon termination of eligibility for coverage under a group or individual contract; or
- b. upon termination of the group contract.

2. To obtain the conversion contract, an enrollee shall submit a written application and the applicable premium payment within the time period and in the manner prescribed by Section 38-71-770. The enrollee shall be entitled to the same right of continuation of coverage as provided therein.

3. A conversion contract shall not be required to be made available if:

- a. the enrollee's termination of coverage occurred for any of the reasons listed in Subparagraphs 1.a.(1), (2), or (3) of Subsection B of Section IV of this regulation;
- b. the enrollee is covered by or is eligible for benefits under Medicare, Title XVIII of the United States Social Security Act;
- c. the enrollee is covered by or is eligible for similar hospital, medical or surgical benefits under state or federal law;
- d. the enrollee is covered by or is eligible for similar hospital, medical or surgical benefits under any arrangement of coverage for individuals in a group;
- e. the enrollee is covered for similar benefits by an individual policy or contract; or
- f. the enrollee has not been continuously covered during the three-month period immediately preceding that person's termination of coverage.

4. As a minimum, the conversion contract shall provide basic health care services if conversion is to a health maintenance organization contract or shall provide benefits meeting the minimum requirements of Section 38-71-770, if conversion is to a policy of health insurance.

5. Coverage shall be provided without requiring evidence of insurability and shall not impose any preexisting condition limitations or exclusions as described in Subsection A of Section IV other than those remaining unexpired under the contract from which conversion is exercised. Any probationary or waiting period set forth in

144 FINAL REGULATIONS

the conversion contract shall be deemed to commence on the effective date of the enrollee's coverage under the prior contract.

Q. Group Contract Discontinuance and Replacement. The provision of S. C. Code Section 38-71-760 governing discontinuance and replacement of coverage are applicable to group health maintenance organization contracts.

R. Coordination of Benefits.

1. The contract and evidence of coverage may contain a provision for coordination of benefits that shall be consistent with that applicable to other health insurers and health maintenance organizations in South Carolina.

2. Any provisions or rules for coordination of benefits established by a health maintenance organization shall not relieve a health maintenance organization of its duty to provide or arrange for a covered health care service to any enrollee because the enrollee is entitled to coverage under any other contract, policy or plan, including coverage provided under government programs.

S. Right to Examine Contract.

1. An individual contract shall contain a provision stating that a person who has entered into an individual contract with a health maintenance organization shall be permitted to return the contract within ten (10) days of receiving it and to receive a refund of the premium paid if the person is not satisfied with the contract for any reason.

2. If the contract is returned to the health maintenance organization or to the agent through whom it was purchased, it is considered void from the beginning.

3. However, if services are rendered or claims are paid for such person by the health maintenance organization during the ten-day examination period, the person shall not be permitted to return the contract and receive a refund of the premium paid.

T. Subrogation/Injuries Caused by Third Parties. Any provisions concerning subrogation for injuries caused by third parties shall conform to the requirements of S. C. Code Section 38-71-190 (1976), as amended.

U. Conformity with State Law. Any contract and evidence of coverage that contains any provision not in conformity with the Health Maintenance Organization Act of 1987 shall not be rendered invalid but shall be construed and applied as if it were in full compliance with this regulation and the Health Maintenance Organization Act of 1987.

Section IV. Prohibited Practices.

A. Preexisting Conditions.

1. A health maintenance organization contract may contain a provision limiting coverage for preexisting conditions.

2. The preexisting conditions must be covered no later than twelve months without medical care, treatment, or supplies ending after the effective date of the coverage or twelve months after the effective date of the coverage, whichever occurs first.

3. Preexisting conditions are defined as "those conditions for which medical advice or treatment was received or recommended no more than twelve months prior to the effective date of a person's coverage".

B. Termination of Coverage.

1. Cancellation.

a. No health maintenance organization shall cancel coverage of services provided an enrollee under an individual or group health maintenance organization contract except for one or more of the following reasons:

- (1) failure to pay the amounts due under the contract;
- (2) fraud or material misrepresentation in enrollment or in the use of services or facilities;
- (3) material violation of the terms of the contract;
- (4) failure to meet the eligibility requirements under a group contract, provided that a conversion option is offered.

b. However, coverage shall not be cancelled, terminated or nonrenewed on the basis of the status of the enrollee's health nor on the fact that the enrollee has exercised his rights under the health maintenance organization's complaint system by registering a complaint against the health maintenance organization.

3. Nonrenewal.

a. Group Contracts. No health maintenance organization shall nonrenew a group health maintenance organization contract except on the anniversary date of the contract.

b. Individual Contracts. No health maintenance organization shall nonrenew coverage of services provided an enrollee under an individual health maintenance organization contract unless it has received prior approval from the Commissioner, upon such terms as he deems just, to nonrenew all individual health maintenance organization contracts in this State.

4. No health maintenance organization shall cancel, terminate or nonrenew an enrollee's coverage for services provided under a health maintenance organization contract without giving the enrollee or contractholder written notice of termination which shall be effective at least thirty-one (31) days from the date of mailing or, if not mailed, from the date of delivery and which shall include the reason for termination. For termination due to nonpayment of premium, the grace period as required in Subsection M of Section III of this regulation shall apply. No written notice of termination shall be required to be given for termination due to nonpayment of premium.

5. No health maintenance organization that provides in the contract and evidence of coverage, that coverage of a dependent child shall terminate upon attainment of the limiting age for dependent children shall terminate the coverage of such child if the child is and continues to be both:

- a. incapable of self support because of mental retardation, mental illness or physical incapacity, and
- b. chiefly dependent upon the subscriber for support and maintenance.

6. Proof of such incapacity and dependency shall be furnished to the health maintenance organization by the subscriber within thirty-one (31) days of the child's attainment of the limiting age and subsequently as reasonably required by the health maintenance organization, but not more frequently than annually after the two-year period following the child's attainment of the limiting age.

C. Unfair Discrimination.

1. No health maintenance organization shall unfairly discriminate against any enrollee or applicant for enrollment on the basis of the age, sex, race, color, creed, national origin, ancestry, religion, marital status or lawful occupation of an enrollee, or because of the frequency of utilization of services by an enrollee.

2. However, nothing shall prohibit a health maintenance organization from setting rates or establishing a schedule of charges in accordance with relevant actuarial data.

3. No health maintenance organization shall expel or refuse to re-enroll any enrollee nor refuse to enroll individual members of a group on the basis of the health status or health care needs of the individual enrollee or member.

Section V. Services.

A. Access to Care.

1. A health maintenance organization shall establish and maintain adequate arrangements to provide the health services contracted for by its subscribers including:

- a. reasonable proximity to the business or personal residences of the enrollees so as not to result in unreasonable barriers to accessibility;
- b. reasonable hours of operation and after-hours services;
- c. emergency care services available and accessible within the service area twenty-four (24) hours a day, seven (7) days a week; and
- d. sufficient providers and personnel, including health professionals, administrators and support staff, to assure that all services contracted for will be accessible to enrollees on an appropriate basis without delays detrimental to the health of enrollees.

2. A health maintenance organization utilizing primary care physicians shall make primary care physician services available to each enrollee and shall provide accessibility to medically necessary specialists through staffing, contracting or referral. Such a health maintenance organization shall provide for continuity of care for enrollees referred to specialists.

3. A health maintenance organization shall have written procedures governing the availability of frequently utilized services contracted for by enrollees, including at least the following:

- a. well-patient examinations and immunizations;
- b. emergency telephone consultation on a twenty-four (24) hours per day, seven (7) days per week basis;
- c. treatment of emergencies;
- d. treatment of minor illness; and
- e. treatment of chronic illnesses.

146 FINAL REGULATIONS

B. Basic Health Care Services. A health maintenance organization shall provide, or arrange for the provision of, as a minimum, basic health care services which shall include the following:

1. Emergency care services, as defined in Section 1 of this regulation.
2. Inpatient hospital services, meaning medically necessary hospital services including, but not limited to, room and board; general nursing care; special diets when medically necessary; use of operating room and related facilities; use of intensive care units and services; x-ray, laboratory and other diagnostic tests; drugs, medications, biologicals, anesthesia and oxygen services; special nursing when medically necessary; physical therapy, radiation therapy and inhalation therapy; administration of whole blood and blood plasma; and short-term rehabilitation services.
3. Inpatient physician care services, meaning medically necessary health care services performed, prescribed, or supervised by physicians or other health professionals including diagnostic, therapeutic, medical, surgical, preventive, referral and consultative health care services.
4. Outpatient medical services, meaning preventive and medically necessary health care services provided in a physician's office, a non-hospital-based health care facility, or at a hospital. Outpatient medical services shall include but are not limited to diagnostic services; treatment services; laboratory services; x-ray services; referral services; and physical therapy, radiation therapy and inhalation therapy. Outpatient services shall also include preventive health services which shall include, at least a broad range of voluntary family planning counseling services, well-child care from birth, periodic health evaluations for adults, screening to determine the need for vision and hearing correction, and pediatric and adult immunizations in accordance with accepted medical practice.

C. Out-of-Area Services and Benefits.

1. Copayments or deductibles for out-of-area services shall be shown in the contract and evidence of coverage.
2. When an enrollee is traveling or temporarily out of a health maintenance organization's service area, a health maintenance organization shall provide benefits for reimbursement for emergency care services subject to the following condition:
 - a. the condition could not reasonably have been foreseen;
 - b. the enrollee could not reasonably arrange to return to the service area to receive treatment from the health maintenance organization's provider;
 - c. the travel must be for some purpose other than the receipt of medical treatments; and
 - d. the health maintenance organization is notified by telephone within twenty-four (24) hours of the commencement of such care unless it is shown that it was not reasonably possible to communicate with the health maintenance organization in such time limits.
3. Services received by an enrollee outside of the health maintenance organization's service area will be covered only so long as it is unreasonable to return the enrollee to the service area.

D. Supplemental Health Care Services.

1. In addition to the basic health care services required to be provided in Subsection B of this Section, a health maintenance organization may offer to its enrollee any supplemental health care services it chooses to provide.
2. Limitations as to time and cost may vary from those applicable to basic health care services.

Section VI. Other Requirements.

A. Description of Providers.

1. A health maintenance organization shall provide its subscribers with a list of the names and locations of all of its providers no later than the time of enrollment or the time the contract and evidence of coverage are issued and upon request thereafter. If a provider is no longer affiliated with a health maintenance organization, the health maintenance organization shall provide notice of such change to its affected subscribers and to the Department in a timely manner. Subject to the approval of the Commissioner, a health maintenance organization may provide its subscribers with a list of providers or provider groups for a segment of the service area. However, a list of all providers shall be made available to subscribers upon request.
2. Any list of providers shall contain a notice regarding the availability of the listed providers. Such notice shall be in not less than twelve point type and be placed in a prominent place on the list of providers. The notice shall contain the following language: Enrolling in [name of HMO] does not guarantee services by a particular provider on this list. If you wish to be sure of receiving care from specific providers listed, you should contact the health

maintenance organization to be sure that the particular provider is accepting additional patients for [name of HMO]. Even if a particular provider is participating in [name of HMO] on the date you enroll, there is no guarantee that the provider will continue to participate during the entire term of your enrollment in [name of HMO].

B. Description of the Service Area.

1. A health maintenance organization shall provide its subscribers with a description of its service area no later than the time of enrollment or the time the contract and evidence of coverage is issued and upon request thereafter.

2. If the description of the service area is changed, the health maintenance organization shall provide at such time a new description of the service area to its affected subscribers and to the Department.

C. Copayments and Deductibles.

1. A health maintenance organization may require copayments or deductibles of enrollees as a condition for the receipt of specific health care services.

2. Copayments or deductibles for basic health care services shall be shown in the contract and evidence of coverage.

D. Complaint System.

1. A complaint system shall be established and maintained by a health maintenance organization to provide reasonable procedures for the prompt and effective resolution of written complaints.

2. The complaint system shall provide for written acknowledgement of complaints and complaints to be resolved or to have a final determination of the complaint by the health maintenance organization complaint system within a reasonable period of time, but not more than ninety (90) days from the date the complaint is registered. This period may be extended in the event of a delay in obtaining the documents or records necessary for the resolution of the complaint, or by the mutual written agreement of the health maintenance organization and the enrollee.

3. Pending the resolution of a written complaint filed by a subscriber or enrollee, coverage may not be terminated for any reason which is the subject of the written complaint, except where the health maintenance organization has, in good faith, made a reasonable effort to resolve the written complaint through its complaint system and coverage is being terminated as provided for in Subsection B of Section IV.

4. If enrollee complaints and grievances may be resolved through a specified arbitration agreement, the enrollee shall be advised in writing of his rights and duties under the agreement at the time the complaint is registered. Any such agreement must be accompanied by a statement setting forth in writing the terms and conditions of binding arbitration. Any health maintenance organization that makes such binding arbitration a condition of enrollment must fully disclose this requirement to its enrollees in the contract and evidence of coverage.

Section VII. Severability.

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

Section VIII. Effective Date.

A. This regulation shall become effective ninety (90) days after final publication in the State Register.

B. All health maintenance organization contracts issued or renewed after this date must comply with its provisions.

Fiscal Impact Statement:

No additional state funding is requested.

148 FINAL REGULATIONS

Statutory Authority: 1976 Code Sections 38-3-110; 1-23-10, *et seq.*

69-26. Salvage and Subrogation

Synopsis:

The South Carolina Department of Insurance proposes to repeal Regulation 69-26, Salvage and Subrogation as it conflicts with Statements of Statutory Accounting Principles #65, Section 26 of the National Association of Insurance Commissioners (NAIC) Accounting Practices and Procedures Manual.

Instructions:

Repeal regulation 69-26 in its entirety.

Text:

There will be no text as the regulation will be repealed in its entirety.

Fiscal Impact Statement:

No additional state funding is requested.

Document No. 2686
DEPARTMENT OF LABOR, LICENSING AND REGULATION
DIVISION OF LABOR
CHAPTER 71

Statutory Authority: 1976 Code Section 41-15-220

Synopsis: The South Carolina Department of Labor, Licensing and Regulation, Division of Labor, Office of Occupational Safety and Health incorporates the requirements for keeping records of occupational injuries and illnesses as required by the United States Department of Labor.

Instructions: Replace Regulation 71, Article I, Subarticle 3, sections 300-316 – Recording and Reporting Occupational Injuries and Illnesses -- with sections 300-345.

Text:

Recording and Reporting
Occupational Injuries and Illnesses

Subpart A –Purpose

71-300 Purpose

Subpart B—Scope

71-301 Partial exemption for employers with 10 or fewer employees.

71-302 Partial exemption for establishments in certain industries.

71-303 Keeping records for more than one agency.

Non-mandatory Appendix A to Subpart B—Partially Exempt Industries

Subpart C—Recordkeeping Forms and Recording Criteria

- 71-304 Recording criteria.
- 71-305 Determination of work-relatedness.
- 71-306 Determination of new cases.
- 71-307 General recording criteria.
- 71-308 Recording criteria for needlestick and sharps injuries.
- 71-309 Recording criteria for cases involving medical removal under OSHA standards.
- 71-310 Recording criteria for cases involving occupational hearing loss.
- 71-311 Recording criteria for work-related tuberculosis cases.
- 71-312 Recording criteria for cases involving work-related musculoskeletal disorders.
- 71-313--71-328 [Reserved]
- 71-329 Forms.

Subpart D—Other OSHA Injury and Illness Recordkeeping Requirements

- 71-330 Multiple business establishments.
- 71-331 Covered employees.
- 71-332 Annual summary.
- 71-333 Retention and updating.
- 71-334 Change in business ownership.
- 71-335 Employee involvement.
- 71-336 Prohibition against discrimination.
- 71-337 Deviations from Recordkeeping Requirements
- 71-338 [Reserved]

Subpart E—Reporting Fatality, Injury and Illness Information to the Government

- 71-339 Reporting fatalities and multiple hospitalization incidents to OSHA.
- 71-340 Providing records to government representatives.
- 71-341 [Reserved]
- 71-342 Requests from the Bureau of Labor Statistics for data.

Subpart F—Transition From the Former Rule

- 71-343 Summary and posting of year 2001 data.
- 71-344 Retention and updating of old forms.
- 71-345 [Reserved]

Subpart G—Definitions

- 71-346 Definitions.

Subpart A—Purpose

- 71-300 Purpose

The purpose of this rule (Subarticle 3) is to require employers to record and report work-related fatalities, injuries and illnesses.

Note to 71-300: Recording or reporting a work-related injury, illness, or fatality does not mean that the employer or employee was at fault, that an OSHA rule has been violated, or that the employee is eligible for workers compensation or other benefits.

(Cross Reference: 1904.0)

Subpart B—Scope

150 FINAL REGULATIONS

Note to Subpart B: All employers covered by the Occupational Safety and Health Act (OSH Act) are covered by these Subarticle 3 regulations. However, most employers do not have to keep OSHA injury and illness records unless OSHA or the Bureau of Labor Statistics (BLS) informs them in writing that they must keep records. For example, employers with 10 or fewer employees and business establishments in certain industry classifications are partially exempt from keeping OSHA injury and illness records.

71-301 Partial exemption for employers with 10 or fewer employees.

(a) Basic requirement

(1) If your company had ten (10) or fewer employees at all times during the last calendar year, you do not need to keep OSHA injury and illness records unless OSHA or the BLS informs you in writing that you must keep records under 71-342. However, as required by 71-339, all employers covered by the OSH Act must report to OSHA any workplace incident that results in a fatality or the hospitalization of three or more employees.

(2) If your company had more than ten (10) employees at any time during the last calendar year, you must keep OSHA injury and illness records unless your establishment is classified as a partially exempt industry under 71-302.

(b) Implementation.

(1) Is the partial exemption for size based on the size of my entire company or on the size of an individual business establishment? The partial exemption for size is based on the number of employees in the entire company.

(2) How do I determine the size of my company to find out if I qualify for the partial exemption for size? To determine if you are exempt because of size, you need to determine your company's peak employment during the last calendar year. If you had no more than ten 10 employees at any time in the last calendar year, your company qualifies for the partial exemption for size.

(3) Does the partial exemption for size apply to public sector [State of South Carolina and any political subdivision thereof]? No, the above exemption of not more than ten (10) employees does not apply to employers in the public sector.

(Cross Reference: 1904.1)

71-302 Partial exemptions for establishments in certain industries.

(a) Basic requirement.

(1) If your business establishment is classified in a specific low hazard retail, service, finance, insurance, or real estate industry listed in Appendix A to this Subpart B, you do not need to keep OSHA injury and illness records unless the government asks you to keep the records under 71-342. However, all employers must report to OSHA any workplace incident that results in a fatality or the hospitalization of three or more employees (see 71-339).

(2) If one or more of your company's establishments are classified in a non-exempt industry, you must keep OSHA injury and illness records for all of such establishments unless your company is partially exempted because of size under 71-301.

(b) Implementation:

(1) Does the partial industry classification exemption apply only to business establishments in the retail, services, finance, insurance, or real estate industries (SICs 52-89)? Yes, business establishments classified in agriculture; mining; construction; manufacturing; transportation; communication, electric, gas and sanitary services; or wholesale trade are not eligible for the partial industry classification exemption.

(2) Is the partial industry classification exemption based on the industry classification of my entire company or on the classification of individual business establishments operated by my company? The partial industry classification exemption applies to individual business establishments. If a company has several business establishments engaged in different classes of business activities, some of the company's establishments may be required to keep records, while others may be exempt.

(3) How do I determine the Standard Industrial Classification code for my company or for individual establishments? You determine your Standard Industrial Classification (SIC) code by using the Standard Industrial Classification Manual, Executive Office of the President, Office of Management and Budget. You may contact your nearest OSHA office or State agency for help in determining your SIC.

(4) Does the partial industry classification exemption apply to public sector [State of South Carolina and any political subdivision thereof]? No, the above exemption applies only to establishments in the private sector. The exemption does not apply to the State of South Carolina or any political subdivisions thereof.

(Cross Reference: 1904.2)

71-303 Keeping records for more than one agency.

If you create records to comply with another government agency's injury and illness recordkeeping requirements, OSHA will consider those records as meeting OSHA's Subarticle 3 recordkeeping requirements if OSHA accepts the other agency's records under a memorandum of understanding with that agency, or if the other agency's records contain the same information as this Subarticle 3 requires you to record. you may contact your nearest OSHA office or State agency for help in determining whether your records meet OSHA's requirements.

Non-Mandatory Appendix A to Subpart B—Partially Exempt Industries

Employers are not required to keep OSHA injury and illness records for any establishment classified in the following Standard Industrial Classification (SIC) codes, unless they are asked in writing to do so by OSHA, the Bureau of Labor Statistics (BLS), or a state agency operating under the authority of OSHA or the BLS. All employers including those partially exempted by reason of company size or industry classification must report to OSHA any workplace incident that results in a fatality or the hospitalization of three or more employees (see 71-339).

(Cross Reference 1904.3)

152 FINAL REGULATIONS

| SIC Code | Industry Description | SIC Code | Industry description |
|----------|--|----------|--|
| 525... | Hardware Stores | 725... | Shoe Repair and Shoeshine Parlors |
| 542... | Meat and Fish Markets | 726... | Funeral Service and Crematories |
| 544... | Candy, Nut, and Confectionery Stores | 729... | Miscellaneous Personal Services |
| 545... | Dairy Products Stores | 731... | Advertising Services |
| 546... | <i>Retail Bakeries</i> | 732... | <i>Credit Reporting and Collection Services</i> |
| 549... | <i>Miscellaneous Food Stores</i> | 733... | <i>Mailing, Reproduction, & Stenographic Services</i> |
| 551... | <i>New and Used Car Dealers</i> | 737... | <i>Computer and Data Processing Services</i> |
| 552... | Used Car Dealers | 738... | Miscellaneous Business Service |
| 554... | Gasoline Service Stations | 764... | Reupholstery and Furniture Repair |
| 557... | Motorcycle Dealers | 78.... | Motion Picture |
| 56... | Apparel and Accessory Stores | 791... | Dance Studios, Schools, and Halls |
| 573... | Radio, Television, & Computer Stores | 792... | Producers, Orchestras, Entertainers |
| 58... | Eating and Drinking Places | 793... | Bowling Centers |
| 591... | Drug Stores and Proprietary Stores | 801... | Offices & Clinics of Medical Doctors |
| 592... | Liquor Stores | 802... | Offices & Clinics of Dentists |
| 594... | Miscellaneous Shopping Goods Stores | 803... | Offices of Osteopathic |
| 599... | Retail Stores, Not Elsewhere Classified | 804... | Offices of Other Health Practitioners |
| 60... | Depository Institutions (banks and savings institutions) | 807... | Medical and Dental Laboratories |
| 61... | Nondepository | 809... | Health and Allied Services, Not Elsewhere Classified |
| 62... | Security and Commodity | 81... | Legal Services |
| 63... | Insurance Carriers | 82 ... | Educational Services (schools, colleges, universities and libraries) |
| 64... | Insurance Agents, Brokers & Services | 832... | Individual and Family Services |
| 653... | Real Estate Agents and Managers | 835... | Child Day Care Services |
| 654... | Title Abstract Offices | 839... | Social Services, Not Elsewhere Classified |
| 67... | Holding and Other Investments Offices | 841... | Museums and Art Galleries |
| 722... | Photographic Studios, Portrait | 86.... | Membership Organizations |
| 723... | Beauty Shops | 87... | Engineering, Accounting, Research Management, and Related Services |
| 724... | Barber Shops | 899... | Services, Not Elsewhere Classified |

C—Recordkeeping Forms and Recording criteria

Note to Subpart C: This Subpart describes the work-related injuries and illnesses that an employer must enter into the OSHA records and explains the OSHA forms that employers must use to record work-related fatalities, injuries, and illnesses.

71-304 Recording criteria.

(a) Basic requirement. Each employer required by this Part to keep records of fatalities, injuries, and illnesses must record each fatality, injury and illness that:

(1) Is work-related; and

(2) Is a new case; and

(3) Meets one or more of the general recording criteria of 71-307 or the application to specific cases of 71-308 through 71-312.

(b) Implementation. (1) What sections of this rule describe recording criteria for recording work-related injuries and illnesses? The table below indicates which sections of the rule address each topic.

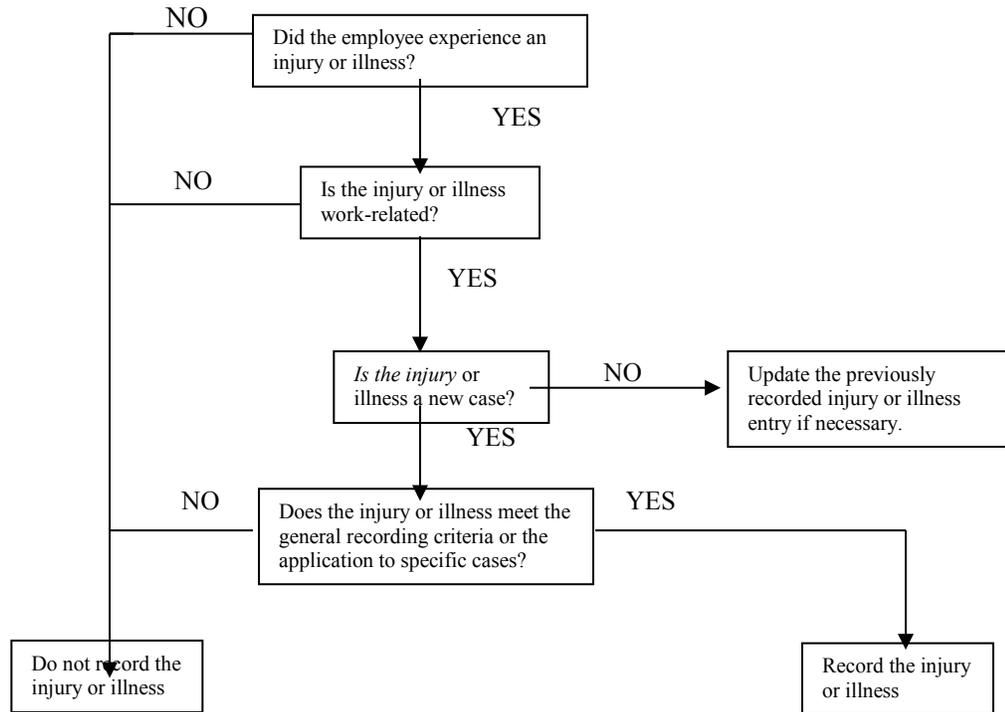
(i) Determination of work-relatedness. See 71-305.

(ii) Determination of a new case. See 71-306.

(iii) General recording criteria. See 71-307.

(iv) Additional criteria. (Needlestick and sharps injury cases, tuberculosis cases, hearing loss cases, medical removal cases, and musculoskeletal disorder cases). See 71-308 through 71-312.

(2) How do I decide whether a particular injury or illness is recordable? The decision tree for recording work-related injuries and illnesses below shows the steps involved in making this determination. (Cross Reference 1904.4)



71-305 Determination of work-relatedness.

(a) Basic requirement. You must consider an injury or illness to be work-related if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness. Work-relatedness is presumed for injuries and illnesses resulting from events or exposures occurring in the work environment, unless an exception in 71-305(b)(2) specifically applies.

(b) Implementation. (1) What is the “work environment”? OSHA defines the work environment as “the establishment and other locations where one or more employees are working or are present as a condition of their employment. The work environment includes not only physical location, but also the equipment or materials used by the employee during the course of his or her work.”

(2) Are there situations where an injury or illness occurs in the work environment and is not considered work-related? Yes, an injury or illness occurring in the work environment that falls under one of the following exceptions is not work-related, and therefore is not recordable.

| 71-305(b)(2) | You are not required to record injuries and illnesses if . . . |
|--------------|---|
| (i)... | At the time of the injury or illness, the employee was present in the work environment as a member of the general public rather than as an employee. |
| (ii)... | The injury or illness involves signs or symptoms that surface at work but result solely from a non-work-related event or exposure that occurs outside the work environment. |
| (iii)... | The injury or illness results solely from voluntary participation in a wellness program or in a medical, fitness or recreational activity such as blood donation, physical examination, flu shot, exercise class, racquetball, or baseball. |
| (iv)... | The injury or illness is solely the result of an employee eating, drinking, or preparing food or drink for personal consumption (whether bought on the employer’s premises or brought in). For example, if the employee is injured by choking on a sandwich while in the employer’s establishment, the case would not be considered work-related. NOTE: If the employee is made ill by ingesting food contaminated by workplace contaminants (such as lead), or gets food poisoning from food supplied by the employer, the case would be considered work-related. |
| (v)... | The injury or illness is solely the result of an employee doing personal tasks (unrelated to their employment) at the establishment outside of the employee’s assigned working hours. |

154 FINAL REGULATIONS

(vi)... The injury or illness is solely the result of personal grooming, self-medication for a non-work-related condition, or is intentionally self-inflicted.

(vii)... The injury or illness is caused by a motor vehicle accident and occurs on a company parking lot or company access road while the employee is commuting to or from work.

(viii)... The illness is the common cold or flu (Note: contagious diseases such as tuberculosis, brucellosis, hepatitis A, or plague are considered work-related if the employee is infected at work).

(ix)... The illness is a mental illness. Mental illness will not be considered work-related unless the employee voluntarily provides the employer with an opinion from a physician or other licensed health care professional with appropriate training and experience (psychiatrist, psychologist, psychiatric nurse practitioner, etc.) stating that the employee has a mental illness that is work-related.

(3) How do I handle a case if it is not obvious whether the precipitating event or exposure occurred in the work environment or occurred away from work? In these situations, you must evaluate the employee's work duties and environment to decide whether or not one or more events or exposures in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing condition.

(4) How do I know if an event or exposure in the work environment "significantly aggravated" a preexisting injury or illness? A preexisting injury or illness has been significantly aggravated, for purposes of OSHA injury and illness recordkeeping, when an event or exposure in the work environment results in any of the following:

- (i) Death, provided that the preexisting injury or illness would likely not have resulted in death but for the occupational event or exposure.
- (ii) Loss of consciousness, provided that the preexisting injury or illness would likely not have resulted in loss of consciousness but for the occupational event or exposure.
- (iii) One or more days away from work, or days of restricted work, or days of job transfer that otherwise would not have occurred but for the occupational event or exposure.
- (iv) Medical treatment in a case where no medical treatment was needed for the injury or illness before the workplace event or exposure, or a change in medical treatment was necessitated by the workplace event or exposure.

(5) Which injuries and illness are considered pre-existing conditions? An injury or illness is a preexisting condition if it resulted solely from a non-work-related event or exposure that occurred outside the work environment.

(6) How do I decide whether and injury or illness is work-related if the employee is on travel status at the time the injury or illness occurs? Injuries or illnesses that occur while an employee is on travel status are work-related if, at the time of the injury or illness, the employee was engaged in work activities "in the interest of the employer." Examples of such activities include travel to and from customer contacts, conducting job tasks, and entertaining or being entertained to transact, discuss, or promote business (work-related entertainment includes only entertainment activities being engaged in at the direction of the employer). Injuries or illnesses that occur when the employee is on travel status do not have to be recorded if they meet one of the exceptions listed below.

| 71-305(b)(6) | If the employee has . . . | You may use the following to determine if an injury or illness is work-related |
|--------------|---|---|
| (i)... | Checked into a hotel or motel for one or more days. | When a traveling employee checks into a hotel, motel or into a other temporary residence, or he or she establishes a "home away from home." You must evaluate the employee's activities after he or she checks into the hotel, motel, or other temporary residence for their work-relatedness in the same manner as you evaluate the activities of a non-traveling employee. When the employee checks into the temporary residence, he or she is considered to have left the work environment. When the employee begins work each day, he or she re-enters the work environment. If the employee has established a "home away from home" and is reporting to a fixed worksite each day, you also do not consider injuries or illnesses work-related if they occur while the employee is commuting between the temporary residence and the job location. |

- (ii)... taken a detour for personal reasons. Injuries or illnesses are not considered work-related if they occur while the employee is on a personal detour from a reasonably direct route of travel (e.g., has taken a side trip for personal reasons).

(7) How do I decide if a case is work-related when the employee is working at home? Injuries and illnesses that occur while an employee is working at home, including work in a home office, will be considered work-related if the injury or illness occurs while the employee is performing work for pay or compensation in the home, and the injury or illness is directly related to the performance of work rather than to the general home environment or setting. For example, if an employee drops a box of work documents and injures his or her foot, the case is considered work-related. If an employee's fingernail is punctured by a needle from a sewing machine used to perform garment work at home, becomes infected and requires medical treatment, the injury is considered work-related. If an employee is injured because he or she trips on the family dog while rushing to answer a work phone call, the case is not considered work-related. If an employee working at home is electrocuted because of faulty home wiring, the injury is not considered work-related.

(Cross Reference 1904.5)

71-306 Determination of new cases.

- (a) Basic requirement. You must consider an injury or illness to be a "new case" if:
- (1) The employee has not previously experienced a recorded injury or illness of the same type that affects the same part of the body, or
 - (2) The employee previously experienced a recorded injury or illness of the same type that affected the same part of the body but had recovered completely (all signs and symptoms had disappeared) from the previous injury or illness and an event or exposure in the work environment caused the signs or symptoms to reappear.
- (b) Implementation.
- (1) When an employee experiences the signs or symptoms of a chronic work-related illness, do I need to consider each recurrence of signs or symptoms to be a new case? No, for occupational illnesses where the signs or symptoms may recur or continue in the absence of an exposure in the workplace, the case must only be recorded once. Examples may include occupational cancer, asbestosis, byssinosis and silicosis.
 - (2) When an employee experiences the signs or symptoms of an injury or illness as a result of an event or exposure in the workplace, such as an episode of occupational asthma, must I treat the episode as a new case? Yes, because the episode or recurrence was caused by an event or exposure in the workplace, the incident must be treated as a new case.
 - (3) May I rely on a physician or other licensed health care professional to determine whether a case is a new case or a recurrence of an old case? You are not required to seek the advice of a physician or other licensed health care professional. However, if you do seek such advice, you must follow the physician or other licensed health care professional's recommendation about whether the case is a new case or a recurrence. If you receive recommendations from two or more physicians or other licensed health care professionals, you must make a decision as to which recommendation is the most authoritative (best documented, best reasoned, or most authoritative), and record the case based upon that recommendation.
- (Cross Reference 1904.6)

71-307 General recording criteria.

- (a) Basic requirement. You must consider an injury or illness to meet the general recording criteria, and therefore to be recordable, if it results in any of the following: death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness. You must also consider a case to meet the general recording criteria if it involves a significant injury or illness diagnosed by a physician or other licensed health care professional, even if it does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness.
- (b) Implementation. (1) How do I decide if a case meets one or more of the general recording criteria? A work-related injury or illness must be recorded if it results in one or more of the following:
- (i) Death. See 71-307(b)(2).

156 FINAL REGULATIONS

- (ii) Days away from work. See 71-307(b)(3).
- (iii) Restricted work or transfer to another job. See 71-307(b)(4).
- (iv) Medical treatment beyond first aid. See 71-307(b)(5).
- (v) Loss of consciousness. See 71-307(b)(6).
- (vi) A significant injury or illness diagnosed by a physician or other licensed health care professional. See 71-307(b)(7).

(2) How do I record a work-related injury or illness that results in the employee's death? You must record an injury or illness that results in death by entering a check mark on the OSHA 300 Log in the space for cases resulting in death. You must also report any work-related fatality to OSHA within eight (8) hours, as required by 71-339.

(3) How do I record a work-related injury or illness that results in days away from work? When an injury or illness involves one or more days away from work, you must record the injury or illness on the OSHA 300 Log with a check mark in the space for cases involving days away and an entry of the number of calendar days away from work in the number of days column. If the employee is out for an extended period of time, you must enter an estimate of the days that the employee will be away, and update the day count when the actual number of days is known.

(i) Do I count the day on which the injury occurred or the illness began? No, you begin counting days away on the day after the injury occurred or the illness began.

(ii) How do I record an injury or illness when a physician or other licensed health care professional recommends that the worker stay at home but the employee comes to work anyway? You must record these injuries and illnesses on the OSHA 300 Log using the check box for cases with days away from work and enter the number of calendar days away recommended by the physician or other licensed health care professional. If a physician or other licensed health care professional recommends days away, you should encourage your employee to follow that recommendation. However, the days away must be recorded whether the injured or ill employee follows the physician or licensed health care professional's recommendation or not. If you receive recommendations from two or more physicians or other licensed health care professionals, you may make a decision as to which recommendation is the most authoritative, and record the case based upon that recommendation.

(iii) How do I handle a case when a physician or other licensed health care professional recommends that the worker return to work but the employee stays at home anyway? In this situation, you must end the count of days away from work on the date the physician or other licensed health care professional recommends that the employee return to work.

(iv) How do I count weekends, holidays, or other days the employee would not have worked anyway? You must count the number of calendar days the employee was unable to work as a result of the injury or illness, regardless of whether or not the employee was scheduled to work on those day(s). Weekend day, holidays, vacation days or other days off are included in the total number of days recorded if the employee would not have been able to work on those days because of work-related injury or illness.

(v) How do I record a case in which a worker is injured or becomes ill on a Friday and reports to work on a Monday, and was not scheduled to work on the weekend? You need to record this case only if you receive information from a physician or other licensed health care professional indicating that the employee should not have worked, or should have performed only restricted work, during the weekend. If so, you must record the injury or illness as a case with days away from work or restricted work, and enter the day counts, as appropriate.

(vi) How do I record a case in which a worker is injured or becomes ill on the day before scheduled time off such as a holiday, a planned vacation or a temporary plant closing? You need to record a case of this type only if you receive information from a physician or other licensed health care professional indicating that the employee should not have worked, or should have performed only restricted work, during the scheduled time off. If so, you must record the injury or illness as a case with days away from work or restricted work, and enter the day counts, as appropriate.

(vii) Is there a limit to the number of days away from work I must count? Yes, you may "cap" the total days away at 180 calendar days. You are not required to keep track of the number of calendar days away

from work if the injury or illness resulted in more than 180 calendar days away from work and/or days of job transfer or restriction. In such a case, entering 180 in the total days away column will be considered adequate.

(viii) May I stop counting days if an employee who is away from work because of an injury or illness retires or leaves my company? Yes, if the employee leaves your company for some reason unrelated to the injury or illness, such as retirement, a plant closing, or to take another job, you may stop counting days away from work or days of restriction/job transfer. If the employee leaves your company because of the injury or illness, you must estimate the total number of days away or days of restriction/job transfer and enter the day count on the 300 Log.

(ix) If a case occurs in one year but results in days away during the next calendar year, do I record the case in both years? No, you only record the injury or illness once. You must enter the number of calendar days away for the injury or illness on the OSHA 300 Log for the year in which the injury or illness occurred. If the employee is still away from work because of the injury or illness when you prepare the annual summary, estimate the total number of calendar days you expect the employee to be away from work, use this number to calculate the total for the annual summary, and then update the initial log entry later when the day count is known or reaches the 180-day cap.

(4) How do I record a work-related injury or illness that results in restricted work or job transfer? When an injury or illness involves restricted work or job transfer but does not involve death or days away from work, you must record the injury or illness on the OSHA 300 Log by placing a check mark in the space for job transfer or restriction and an entry of the number of restricted or transferred days in the restricted work days column.

(i) How do I decide if the injury or illness resulted in restricted work? Restricted work occurs when, as the result of a work-related injury or illness:

(A) You keep the employee from performing one or more of the routine functions of his or her job, or from working the full workday that he or she would otherwise have been scheduled to work; or

(B) A physician or other licensed health care professional recommends that the employee not perform one or more of the routine functions of his or her job, or not work the full workday that he or she would otherwise have been scheduled to work.

(ii) What is meant by “routine functions”? For recordkeeping purposes, an employee’s routine functions are those work activities the employee regularly performs at least once per week.

(iii) Do I have to record restricted work or job transfer if it applies only to the day on which the injury occurred or the illness began? No, you do not have to record restricted work or job transfers if you, or the physician or other licensed health care professional, impose the restriction or transfer only for the day on which the injury occurred or the illness began.

(iv) If you or a physician or other licensed health care professional recommends a work restriction, is the injury or illness automatically recordable as a “restricted work” case? No, a recommended work restriction is recordable only if it affects one or more of the employee’s routine job functions. To determine whether this is the case, you must evaluate the restriction in light of the routine functions of the injured or ill employee’s job. If the restriction from you or the physician or other licensed health care professional keeps the employee from performing one or more of his or her routine job functions, or from working the full workday the injured or ill employee would otherwise have worked, the employee’s work has been restricted and you must record the case.

(v) How do I record a case where the worker works only for a partial work shift because of a work-related injury or illness? A partial day of work is recorded as a day of job transfer, or restriction for recordkeeping purposes, except for the day on which the injury occurred or the illness began.

(vi) If the injured or ill worker produces fewer goods or services than he or she would have produced prior to the injury or illness but otherwise performs all of the routine functions of his or her work, is the case considered a restricted work case? No, the case is considered restricted work only if the worker does not perform all of the routine functions of his or her job or does not work the full shift that he or she would otherwise have worked.

(vii) How do I handle vague restrictions from a physician or other licensed health care professional, such as that the employee engage only in “light duty” or “take it easy for a week”? If you are not clear about the physician or other licensed health care professional’s recommendation, you may ask that person whether the employee can do all of his or her routine job functions and work all of his or her normally assigned work shift. If the answer to both of these questions is “Yes,” then the case does not involve a work restriction and

158 FINAL REGULATIONS

does not have to be recorded as such. If the answer to one or both of these questions is “No,” the case involves restricted work and must be recorded as a restricted work case. If you are unable to obtain this additional information from the physician or other licensed health care professional that recommended the restriction, record the injury or illness as a case involving restricted work.

(viii) What do I do if a physician or other licensed health care professional recommends a job restriction meeting OSHA’s definition, but the employee does all of his or her routine job functions anyway? You must record the injury or illness on the OSHA 300 Log as a restricted work case. If a physician or other licensed health care professional recommends a job restriction, you should ensure that the employee complies with that restriction. If you receive recommendations from two or more physicians or other licensed health care professionals, you may make a decision as to which recommendation is the most authoritative, and record the case based upon that recommendation.

(ix) How do I decide if an injury or illness involved a transfer to another job? If you assign an injured or ill employee to a job other than his or her regular job for part of the day, the case involves transfer to another job.

Note: This does not include the day on which the injury or illness occurred.

(x) Are transfers to another job recorded in the same way as restricted work cases? Yes, both job transfer and restricted work cases are recorded in the same box on the OSHA 300 Log. For example, if you assign, or a physician or other licensed health care professional recommends that you assign, an injured or ill worker to his or her routine job duties for part of the day and to another job for the rest of the day, the injury or illness involves a job transfer. You must record an injury or illness that involves a job transfer by placing a check in the box for job transfer.

(xi) How do I count days of job transfer or restriction? You count days of job transfer or restriction in the same way you count days away from work, using 71-307(b)(3)(i) to (viii), above. The only difference is that, if you permanently assign the injured or ill employee to a job that has been modified or permanently changed in a manner that eliminates the routine functions the employee was restricted from performing, you may stop the day count when the modification or change is made permanent. You must count at least one day of restricted work or job transfer for such cases.

(5) How do I record an injury or illness that involves medical treatment beyond first aid? If a work-related injury or illness results in medical treatment beyond first aid, you must record it on the OSHA 300 Log. If the injury or illness did not involve death, one or more days away from work, one or more days of restricted work, or one or more days of job transfer, you enter a check mark in the box for cases where the employee received medical treatment but remained at work and was not transferred or restricted.

(i) What is the definition of medical treatment? “Medical treatment” means the management and care of a patient to combat disease or disorder. For the purposes of Subarticle 3, medical treatment does not include:

(A) Visits to a physician or other licensed health care professional solely for observation or counseling;

(B) The conduct of diagnostic procedures, such as x-rays and blood tests, including the administration of prescription medications used solely for diagnostic purposes (e.g., eye drops to dilate pupils); or

(C) “First aid” as defined in paragraph (b)(5)(ii) of this section.

(ii) What is “first aid”? For the purposes of Subarticle 3, “first aid” means the following:

(A) Using a non-prescription medication at nonprescription strength (for medications available in prescription and non-prescription form, a recommendation by a physician or other licensed health care professional to use a non-prescription medication at prescription strength is considered medical treatment for recordkeeping purposes);

(B) Administering tetanus immunizations (other immunizations, such as Hepatitis B vaccine or rabies vaccine, are considered medical treatment);

(C) Cleaning, flushing or soaking wounds on the surface of the skin;

(D) Using wound coverings such as bandages, Band-Aids™, gauze pads, etc.; or using butterfly bandages or Steri-Strips™ (other wound closing devices such as sutures, staples, etc., are considered medical treatment);

- (E) Using hot or cold therapy;
 - (F) Using any non-rigid means of support, such as elastic bandages, wraps, non-rigid back belts, etc. (devices with rigid stays or other systems designed to immobilize parts of the body are considered medical treatment for recordkeeping purposes);
 - (G) Using temporary immobilization devices while transporting an accident victim (e.g., splints, slings, neck collars, back boards, etc.);
 - (H) Drilling of a fingernail or toenail to relieve pressure, or draining fluid from a blister;
 - (I) Using eye patches;
 - (J) Removing foreign bodies from the eye using only irrigation or a cotton swab;
 - (K) Removing splinters or foreign material from areas other than the eye by irrigation, tweezers, cotton swabs or other simple means;
 - (L) Using finger guards;
 - (M) Using massages (physical therapy or chiropractic treatment are considered medical treatment for recordkeeping purposes); or
 - (N) Drinking fluids for relief of heat stress.
- (iii) Are any other procedures included in first aid? No, this is a complete list of all treatments considered first aid for Subarticle 3 purposes.
- (iv) Does the professional status of the person providing the treatment have any effect on what is considered first aid or medical treatment? No, OSHA considers the treatment listed in 71-307(b)(5)(ii) of this Part to be first aid regardless of the professional status of the person providing the treatment. Even when these treatments are provided by a physician or other licensed health care professional, they are considered first aid for the purposes of Subarticle 3. Similarly, OSHA considers treatment beyond first aid to be medical treatment even when it is provided by someone other than a physician or other licensed health care professional.
- (v) What if a physician or other licensed health care professional recommends medical treatment but the employee does not follow the recommendation? If a physician or other licensed health care professional recommends medical treatment, you should encourage the injured or ill employee to follow that recommendation. However, you must record the case even if the injured or ill employee does not follow the physician or other licensed health care professional's recommendation.
- (6) Is every work-related injury or illness case involving a loss of consciousness recordable? Yes, you must record a work-related injury or illness if the worker becomes unconscious, regardless of the length of time the employee remains unconscious.
- (7) What is a "significant" diagnosed injury or illness that is recordable under the general criteria even if it does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness? Work-related cases involving cancer, chronic irreversible disease, a fractured or cracked bone, or a punctured eardrum must always be recorded under the general criteria at the time of diagnosis by a physician or other licensed health care professional.

Note to 71-307: OSHA believes that most significant injuries and illnesses will result in one of the criteria listed in 71-307(a): death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness. However, there are some significant injuries, such as a punctured eardrum or fractured toe or rib, for which neither medical treatment nor work restrictions may be recommended. In addition, there are some significant progressive diseases, such as byssinosis, silicosis, and some types of cancer, for which medical treatment or work restrictions may not be recommended at the time of diagnosis but are likely to be recommended as the disease progresses. OSHA believes that cancer, chronic irreversible diseases, fractured or cracked bones, and punctured eardrums are generally considered significant injuries and illnesses, and must be recorded at the initial diagnosis even if medical treatment or work restrictions are not recommended, or are postponed, in a particular case.

(Cross Reference 1904.7)

71-308 Recording criteria for needlestick and sharps injuries.

160 FINAL REGULATIONS

(a) Basic requirement. You must record all work-related needlestick injuries and cuts from sharp objects that are contaminated with another person's blood or other potentially infectious material (as defined by 29 CFR 1910.1030). You must enter the case on the OSHA 300 Log as an injury. To protect the employee's privacy, you may not enter the employee's name on the OSHA 300 Log (see the requirements for privacy cases in paragraphs, 71-329(b)(6) through 71-329(b)(9)).

(b) Implementation. (1) What does "other potentially infectious material" mean? The term "other potentially infectious materials" is defined in the OSHA Bloodborne Pathogens standard at 1910.1030(b). These materials include:

- (i) Human bodily fluids, tissues and organs, and
- (ii) Other materials infected with the HIV or hepatitis B (HBV) virus such as laboratory cultures or tissues from experimental animals.

(2) Does this mean that I must record all cuts, lacerations, punctures, and scratches? No, you need to record cuts, lacerations, punctures, and scratches only if they are work-related and involve contamination with another person's blood or other potentially infectious material. If the cut, laceration, or scratch involves a clean object, or a contaminant other than blood or other potentially infectious material, you need to record the case only if it meets one or more of the recording criteria in 71-307.

(3) If record an injury and the employee is later diagnosed with an infectious bloodborne disease, do I need to update the OSHA 300 Log? Yes, you must update the classification of the case on the OSHA 300 Log if the case results in death, days away from work, restricted work, or job transfer. You must also update the description to identify the infectious disease and change the classification of the case from an injury to an illness.

(4) What if one of my employees is splashed or exposed to blood or other potentially infectious material without being cut or scratched? Do I need to record this incident? You need to record such an incident on the OSHA 300 Log as an illness if:

- (i) It results in the diagnosis of a bloodborne illness, such as HIV, hepatitis B, or hepatitis C; or
- (ii) It meets one or more of the recording criteria in 71-307.

(Cross Reference: 1904.8)

71-309 Recording criteria for cases involving medical removal under OSHA standards.

(a) Basic requirement. If an employee is medically removed under the medical surveillance requirements of an OSHA standard, you must record the case on the OSHA 300 Log.

(b) Implementation. (1) How do I classify medical removal cases on the OSHA 300 Log? You must enter each medical removal case on the OSHA 300 Log as either a case involving days away from work or a case involving restricted work activity, depending on how you decide to comply with the medical removal requirement. If the medical removal is the result of a chemical exposure, you must enter the case on the OSHA 300 Log by checking the "poisoning" column.

(2) Do all of OSHA's standards have medical removal provisions? No, some OSHA standards, such as the standards covering bloodborne pathogens and noise, do not have medical removal provisions. Many OSHA standards that cover specific chemical substances have medical removal provisions. These standards include, but are not limited to lead, cadmium, methylene chloride, formaldehyde, and benzene.

(3) Do I have to record a case where I voluntarily removed the employee from exposure before the medical removal criteria in an OSHA standard is met? No, if the case involves voluntary medical removal before the medical removal levels required by an OSHA standard, you do not need to record the case on the OSHA 300 Log.

(Cross Reference 1904.9)

71-310 Recording criteria for cases involving occupational hearing loss.

(a) Basic requirement. If an employee's hearing test (audiogram) reveals that a Standard Threshold Shift (STS) has occurred, you must record the case on the OSHA 300 Log by checking the "hearing loss" column.

(b) Implementation. (1) What is a Standard Threshold Shift? A Standard Threshold Shift, or STS is defined in the occupational noise exposure standard at 29 CFR 1910.95(c)(10)(i) as a change in hearing threshold, relative

to the most recent audiogram for that employee, of an average of 10 decibels (db) or more at 2000, 3000, and 4000 hertz in one or both ears.

(2) How do I determine whether an STS has occurred? If the employee has never previously experienced a recordable hearing loss, you must compare the employee's current audiogram with that employee's baseline audiogram. If the employee has previously experienced a recordable hearing loss, you must compare the employee's current audiogram with the employee's revised baseline audiogram (the audiogram reflecting the employee's previous recordable hearing loss case).

(3) May I adjust the audiogram results to reflect the effects of aging on hearing? Yes, when comparing audiogram results, you may adjust the results for the employee's age when the audiogram was taken using Tables F-1 or F-2, as appropriate, in Appendix F of 29 CFR 1910.95.

(4) Do I have to record the hearing loss if I am going to retest the employee's hearing? No, if you retest the employee's hearing within 30 days of the first test, and the retest does not confirm the STS, you are not required to record the hearing loss case on the OSHA 300 Log. If the retest confirms the STS, you must record the hearing loss illness within seven (7) calendar days of the retest.

(5) Are there any special rules for determining whether a hearing loss case is work-related? Yes, hearing loss is presumed to be work-related if the employee is exposed to noise in the workplace at an 8-hour time-weighted average of 85 dBA or greater, or to a total noise dose of 50 percent, as defined in 29 CFR 1910.95. For hearing loss cases where the employee is not exposed to this level of noise, you must use the rules in 71-305 to determine if the hearing loss is work-related.

(6) If a physician or other licensed health care professional determines the hearing loss is not work-related, do I still need to record the case? If a physician or other licensed health care professional determines that the hearing loss is not work-related or has not been significantly aggravated by occupational noise exposure, you are not required to consider the case work-related or to record the case on the OSHA 300 Log.

(Cross Reference: 1904.10)

71-311 Recording criteria for work-related tuberculosis cases.

(a) Basic requirement. If any of your employees has been occupationally exposed to anyone with a known case of active tuberculosis (TB), and that employee subsequently develops a tuberculosis infection, as evidenced by a positive skin test or diagnosis by a physician or other licensed health care professional, you must record the case on the OSHA 300 Log by checking the "respiratory condition" column.

(b) Implementation. (1) Do I have to record, on the Log, a positive TB skin test result obtained at a pre-employment physical? No, you do not have to record it because the employee was not occupationally exposed to a known case of active tuberculosis in your workplace.

(2) May I line-out or erase a recorded TB case if I obtain evidence that the case was not caused by occupational exposure? Yes, you may line-out or erase the case from the Log under the following circumstances:

(i) The worker is living in a household with a person who has been diagnosed with active TB;

(ii) The Public Health Department has identified the worker as a contact of an individual with a case of active TB unrelated to the workplace; or

(iii) A medical investigation shows that the employee's infection was caused by exposure to TB away from work, or proves that the case was not related to the workplace TB exposure.

(Cross Reference: 1904.11)

71-312 Recording criteria for cases involving work-related musculoskeletal disorders.

(a) Basic requirement. If any of your employees experiences a recordable work-related musculoskeletal disorder (MSD), you must record it on the OSHA 300 Log by checking the "musculoskeletal disorder" column.

(b) Implementation. (1) What is a "musculoskeletal disorder" or MSD? Musculoskeletal disorders (MSDs) are disorders of the muscles, nerves, tendons, ligaments, joints, cartilage, and spinal discs. MSDs do not include

162 FINAL REGULATIONS

disorders caused by slips, trips, falls, motor vehicle accidents, or other similar accidents. Examples of MSDs include: Carpal tunnel syndrome, Rotator cuff syndrome, DeQuervain's disease, Trigger finger, Tarsal tunnel syndrome, Sciatica, Epicondylitis, Tendonitis, Raynaud's phenomenon, Carpet layers knee, Herniated Spinal disc, and Low back pain.

(2) How do I decide which musculoskeletal disorders to record? There are no special criteria for determining which musculoskeletal disorders to record. An MSD case is recorded using the same process you would use for any other injury or illness. If a musculoskeletal disorder is work-related, and is a new case, and meets one or more of the general recording criteria, you must record the musculoskeletal disorder. The following table will guide you to the appropriate section of the rule for guidance on recording MSD cases.

- (i) Determining if the MSD is work-related. See 71-305.
- (ii) Determining if the MSD is a new case. See 71-306.
- (iii) Determining if the MSD meets one or more of the general recording criteria.
 - (A) Days away from work, see 71-307(b)(3).
 - (B) Restricted work or transfer to another job, see 71-307(b)(4).
 - (C) Medical treatment beyond first aid, see 71-307(b)(5).

(3) If a work-related MSD case involves only subjective symptoms like pain or tingling, do I have to record it as a musculoskeletal disorder? The symptoms of an MSD are treated the same as symptoms for any other injury or illness. If an employee has pain, tingling, burning, numbness or any other subjective symptom of an MSD, and the symptoms are work-related, and the case is a new case that meets the recording criteria, you must record the case on the OSHA 300 Log as a musculoskeletal disorder.

(Cross Reference 1904.12)

71-313—71-328 [Reserved]

71-329 Forms.

(a) Basic requirement. You must use OSHA 300, 300-A, and 301 forms, or equivalent forms, for recordable injuries and illnesses. The OSHA 300 form is called the Log of Work-Related Injuries and Illnesses, the 300-A is the Summary of Work-Related Injuries and Illnesses, and the OSHA 301 form is called the Injury and Illness Incident Report.

(b) Implementation. (1) What do I need to do to complete the OSHA 300 Log? You must enter information about your business at the top of the OSHA 300 Log, enter a one or two line description for each recordable injury or illness and summarize this information on the OSHA 300-A at the end of the year.

(2) What do I need to do to complete the OSHA 301 Incident Report? You must complete an OSHA 301 Incident Report form, or an equivalent form, for each recordable injury or illness entered on the OSHA 300 Log.

(3) How quickly must each injury or illness be recorded? You must enter each recordable injury or illness on the OSHA 300 Log and 301 Incident Report within seven [7] calendar days of receiving information that a recordable injury or illness has occurred.

(4) What is an equivalent form? An equivalent form is one that has the same information, is as readable and understandable, and is completed using the same instructions as the OSHA form it replaces. Many employers use an insurance form instead of the OSHA 301 Incident Report, or supplement an insurance form by adding any additional information required by OSHA.

(5) May I keep my records on a computer? Yes, if the computer can produce equivalent forms when they are needed, as described under 71-335 and 71-340; you may keep your records using the computer system.

(6) Are there situations where I do not put the employee's name on the forms for privacy reasons? Yes, if you have a "privacy concern case," you may not enter the employee's name on the OSHA 300 Log. Instead, enter "privacy case" in the space normally used for the employee's name. This will protect the privacy of the injured or ill employee when another employee, a former employee, or an authorized employee representative is provided access to the OSHA 300 Log under 71-335(b)(2). You must keep a separate, confidential list of the case

numbers and employee names for your privacy concern cases so you can update the cases and provide the information to the government if asked to do so.

(7) How do I determine if an injury or illness is a privacy concern case? You must consider the following injuries or illnesses to be privacy concern cases:

- (i) An injury or illness to an intimate body part or the reproductive system;
- (ii) An injury or illness resulting from a sexual assault;
- (iii) Mental illness;
- (iv) HIV infection, hepatitis, or tuberculosis;
- (v) Needlestick injuries and cuts from sharp objects that are contaminated with another person's blood or other potentially infectious material (see 71-308 for definitions); and
- (vi) Other illnesses, if the employee independently and voluntarily requests that his or her name not be entered on the log. Musculoskeletal disorders (MSDs) are not considered privacy concern cases.

(8) May I classify any other types of injuries and illnesses as privacy concern cases? No, this is a complete list of all injuries and illnesses considered privacy concern cases for Subarticle 3 purposes.

(9) If I have removed the employee's name, but still believe that the employee may be identified from the information on the forms, is there anything else that I can do further protect the employee's privacy? Yes, if you have a reasonable basis to believe that information describing the privacy concern case may be personally identifiable even though the employee's name has been omitted, you may use discretion in describing the injury or illness on both the OSHA 300 and 301 forms. You must enter enough information to identify the cause of the incident and the general severity of the injury or illness, but you do not need to include details of an intimate or private nature. For example, a sexual assault case could be described as "injury from assault," or an injury to a reproductive organ could be described as "lower abdominal injury."

(10) What must I do to protect employee privacy if I wish to provide access to the OSHA Forms 300 and 301 to persons other than government representatives, employees, former employees or authorized representatives? If you decide to voluntarily disclose the Forms to persons other than government representatives, employees, former employees or authorized representatives (as required by 71-335 and 71-340), you must remove or hide the employees' names and other personally identifying information, except for the following cases. You may disclose the Forms with personally identifying information only:

- (i) to an auditor or consultant hired by the employer to evaluate the safety and health program;
- (ii) to the extent necessary for processing a claim for workers' compensation or other insurance benefits; or
- (iii) to a public health authority or law enforcement agency for uses and disclosures for which consent, and authorization, or opportunity to agree or object is not required under Department of Health and Human Services Standards for Privacy of Individually Identifiable Health Information, 45 CFR 164.512.

(Cross Reference: 1904.29)

Subpart D—Other OSHA Injury and Illness Recordkeeping Requirements

71-330 Multiple business establishments.

(a) Basic requirement. You must keep a separate OSHA 300 Log for each establishment that is expected to be in operation for one year or longer.

(b) Implementation. (1) Do I need to keep OSHA injury and illness records for short-term establishments (i.e., establishments that will exist for less than a year)? Yes, however, you do not have to keep a separate OSHA 300 Log for each such establishment. You may keep one OSHA 300 Log that covers all of your short-term establishments. You may also include the short-term establishments recordable injuries and illnesses on an OSHA 300 Log that covers short-term establishments for individual company divisions or geographic regions.

(2) May I keep the records for all of my establishments at my headquarters location or at some other central location? Yes, you may keep the records for an establishment at your headquarters or other central location if you can:

164 FINAL REGULATIONS

(i) Transmit information about the injuries and illnesses from the establishment to the central location within seven (7) calendar days of receiving information that a recordable injury or illness has occurred; and

(ii) Produce and send the records from the central location to the establishment within the time frames required by 71-335 and 71-340 when you are required to provide records to a government representative, employees, former employees or employee representatives.

(3) Some of my employees work at several different locations or do not work at any of my establishments at all. How do I record cases for these employees? You must link each of your employees with one of your establishments, for recordkeeping purposes. You must record the injury and illness on the OSHA 300 Log of the injured or ill employee's establishment or on an OSHA 300 Log that covers that employee's short-term establishment.

(4) How do I record an injury or illness when an employee of one of my establishments is injured or becomes ill while visiting or working at another of my establishments, or while working away from any of my establishments? If the injury or illness occurs at one of your establishments, you must record the injury or illness on the OSHA 300 Log of the establishment at which the injury or illness occurred. If the employee is injured or becomes ill and is not at one of your establishments, you must record the case on the OSHA 300 Log at the establishment at which the employee normally works.

(Cross Reference 1904.30)

71-331 Covered employees.

(a) Basic requirement. You must record on the OSHA 300 Log the recordable injuries and illnesses of all employees on your payroll, whether they are labor, executive, hourly, salary, part-time, seasonal or migrant workers. You also must record the recordable injuries and illnesses that occur to employees who are not on your payroll if you supervise these employees on a day-to-day basis. If your business is organized as a sole proprietorship or partnership, the owner or partners are not considered employees for recordkeeping purposes.

(b) Implementation. (1) If a self-employed person is injured or becomes ill while doing work at my business, do I need to record the injury or illness? No, self-employed individuals are not covered by the OSHA Act or this regulation.

(2) If I obtain employees from a temporary help service, employee leasing service, or personnel supply service, do I have to record an injury or illness occurring to one of those employees? You must record these injuries and illnesses if you supervise these employees on a day-to-day basis.

(3) If an employee in my establishment is a contractor's employee, must I record an injury or illness occurring to that employee? If the contractor's employee is under the day-to-day supervision of the contractor, the contractor is responsible for recording the injury or illness. If you supervise the contractor employee's work on a day-to-day basis, you must record the injury or illness.

(4) Must the personnel supply service, temporary help service, employee leasing service, or contractor also record the injuries or illnesses occurring to temporary, leased or contract employees that I supervise on a day-to-day basis? No, you and the temporary help service, employee leasing service, personnel supply service, or contractor should coordinate your efforts to make sure that each injury and illness is recorded only once; either on your OSHA 300 Log (if you provide day-to-day supervision) or on the other employer's OSHA 300 Log (if that company provides day-to-day supervision).

(Cross Reference 1904.31)

71-332 Annual summary.

(a) Basic requirement. At the end of each calendar year, you must: (1) Review the OSHA 300 Log to verify that the entries are complete and accurate, and correct any deficiencies identified;

(2) Create an annual summary of injuries and illnesses recorded on the OSHA 300 Log;

(3) Certify the summary; and

- (4) Post the annual summary.
- (b) Implementation.
- (1) How extensively do I have to review the OSHA 300 Log entries at the end of the year? You must review the entries as extensively as necessary to make sure that they are complete and correct.
- (2) How do I complete the annual summary? You must:
- (i) Total the columns on the OSHA 300 Log (if you had no recordable cases, enter zeros for each column total); and
 - (ii) Enter the calendar year covered, the company's name, establishment name, establishment address, annual average number of employees covered by the OSHA 300 Log, and the total hours worked by all employees covered by the OSHA 300 Log.
 - (iii) If you are using an equivalent form other than the OSHA 300-A summary form, as permitted under 71-306(b)(4), the summary you use must also include the employee access and employer penalty statements found on the OSHA 300-A Summary form.
- (3) How do I certify the annual summary? A company executive must certify that he or she has examined the OSHA 300 Log and that he or she reasonably believes, based on his or her knowledge of the process by which the information was recorded that the annual summary is correct and complete.
- (4) Who is considered a company executive? The company executive who certifies the log must be one of the following persons:
- (i) An owner of the company (only if the company is a sole proprietorship or partnership);
 - (ii) An officer of the corporation;
 - (iii) The highest ranking company official working at the establishment; or
 - (iv) The immediate supervisor of the highest ranking company official working at the establishment.
- (5) How do I post the annual summary? You must post a copy of the annual summary in each establishment in a conspicuous place or places where notices to employees are customarily posted. You must ensure that the posted annual summary is not altered, defaced or covered by other material.
- (6) When do I have to post the annual summary? You must post the summary no later than February 1 of the year following the year covered by the records and keep the posting in place until April 30.
(Cross Reference 1904.32)

71-333 Retention and updating.

- (a) Basic requirement. You must save the OSHA 300 Log, the privacy case list (if one exists), the annual summary, and the OSHA 301 Incident Report forms for five (5) years following the end of the calendar year that these records cover.
- (b) Implementation. (1) Do I have to update OSHA 300 Log during the five-year storage period? Yes, during the storage period, you must update your stored OSHA 300 Logs to include newly discovered recordable injuries or illnesses and to show any changes that have occurred in the classification of previously recorded injuries and illnesses. If the description or outcome of a case changes, you must remove or line out the original entry and enter the new information.
- (2) Do I have to update the annual summary? No, you are not required to update the annual summary, but you may do so if you wish.
- (3) Do I have to update the OSHA 301 Incident Reports? No, you are not required to update the OSHA 301 Incident Reports, but you may do so if you wish.
(Cross Reference 1904.33)

71-334 Change in business ownership.

If your business changes ownership, you are responsible for recording and reporting work-related injuries and illnesses only for that period of the year during which owned the establishment. You must transfer the Subarticle 3 records to the new owner. The new owner must save all records of the establishment kept by the prior owner, as required by 71-333 of this Part, but need not update or correct the records of the prior owner.

166 FINAL REGULATIONS

(Cross Reference 1904.34).

71-335 Employee involvement.

(a) Basic requirement. Your employees and their representatives must be involved in the recordkeeping system in several ways.

(1) You must inform each employee of how he or she is to report an injury or illness to you.

(2) You must provide limited access to your injury and illness records for your employees and their representatives.

(b) Implementation. (1) What must I do to make sure that employees report work-related injuries and illnesses to me?

(i) You must set up a way for employees to report work-related injuries and illnesses promptly; and

(ii) You must tell each employee how to report work-related injuries and illnesses to you.

(2) Do I have to give my employees and their representatives access to the OSHA injury and illness records? Yes, your employees, former employees, their personal representatives, and their authorized employee representatives have the right to access the OSHA injury and illness records, with some limitations, as discussed below.

(i) Who is an authorized employee representative? An authorized employee representative is an authorized collective bargaining agent of employees.

(ii) Who is a "personal representative" of an employee or former employee? A personal representative is:

(A) Any person that the employee or former employee designates as such, in writing;

or

(B) The legal representative of a deceased or legally incapacitated employee or former employee.

(iii) If an employee or representative asks for access to the OSHA 300 Log, when do I have to provide it? When an employee, former employee, personal representative, or authorized employee representative asks for copies for your current or stored OSHA 300 Log(s) for an establishment the employee or former employee has worked in, you must give the requester a copy of the relevant OSHA 300 Log(s) by the end of the next business day.

(iv) May I remove the names of the employees or any other information from the OSHA 300 Log before I give copies to an employee, former employee, or employee representative? No, you must leave the names on the 300 Log. However, to protect the privacy of injured and ill employees, you may not record the employee's name on the OSHA 300 Log for certain "privacy concern cases," as specified in paragraphs 71-329(b)(6) through 71-329(b)(9).

(v) If an employee or representative asks for access to the OSHA 301 Incident Report, when do I have to provide it?

(A) When an employee, former employee, or personal representative asks for a copy of the OSHA 301 Incident Report describing an injury or illness to that employee or former employee, you must give the requester a copy of the OSHA 301 Incident Report containing that information by the end of the next business day.

(B) When an authorized employee representative asks for copies of the OSHA 301 Incident Reports for an establishment where the agent represents employees under a collective bargaining agreement, you must give copies of those forms to the authorized employee representative within 7 calendar days. You are only required to give the authorized employee representative information from the OSHA 301 Incident Report section titled "Tell us about the case." You must remove all other information from the copy of the OSHA 301 Incident Report or the equivalent substitute form that you give to the authorized employee representative.

(vi) May I charge for the copies? No, you may not charge for these copies the first time they are provided. However, if one of the designated persons asks for additional copies, you may assess a reasonable charge for retrieving and copying the records.

(Cross Reference 1904.35)

71-336 Prohibition against discrimination.

Section 11(c) of the Act prohibits you from discriminating against an employee for reporting a work-related fatality, injury, or illness. That provision of the Act also protects the employee who files a safety and health complaint, asks for access to the Subarticle 3 records or otherwise exercises any rights afforded by the OSHA Act.

(Cross Reference: 1904.36)

71-337 Deviations from recordkeeping requirements.

(a) Any private sector employer who wishes to maintain records in a manner different from that required by this Subarticle, may submit a variance petition to the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, Washington, DC 20210, in accordance with the instructions set forth under 29 CFR (Code of Federal Regulations) Part 1904.38. Any private sector employer granted a petition by the Assistant Secretary of Labor for Occupational Safety and Health must transmit a copy of the petition along with a copy of the final order to the Director of the South Carolina Department of Labor, Licensing and Regulation, Columbia, South Carolina, 29211, within ten (10) days after receipt thereof. After such transmittal, compliance with the order shall constitute compliance with the requirements of this Subarticle.

(b) Any public sector employer who wishes to maintain records in a manner different from that required by this Subarticle, may submit a petition to the Director of the South Carolina Department of Labor, Licensing and Regulation, Columbia, South Carolina in accordance with the instructions set forth under 29 CFR Part 1904.38.

71-338 [Reserved]

71-339 Reporting fatalities and multiple hospitalization incidents to OSHA.

(a) Basic requirement. Within eight (8) hours after the death of any employee from work-related incident or the in-patient hospitalization of three or more employees as a result of a work-related incident, you must orally report the fatality/multiple hospitalization by telephone or in person to the Director of the South Carolina Department of Labor, Licensing and Regulation, Columbia, South Carolina, 29211. You may also use the OSHA central telephone number, 1-800-321-OSHA or 1-803-734-9607.

(b) Implementation. (1) If the Area Office is closed, may I report the incident by leaving a message on OSHA's answering machine, faxing the area office, or sending an e-mail? No, if you can't talk to a person at the Area Office, you must report the fatality or multiple hospitalization incident using 1-800-321-OSHA or 1-803-734-9607.

(2) What information do I need to give to OSHA about the incident? You must give OSHA the following information for each fatality or multiple hospitalization incident:

- (i) The establishment name;
- (ii) The location of the incident;
- (iii) The time of the incident;
- (iv) The number of fatalities or hospitalized employees;
- (v) The names of any injured employees;
- (vi) Your contact person and his or her phone number; and
- (vii) A brief description of the incident.

(3) Do I have to report every fatality or multiple hospitalization incidents resulting from a motor vehicle accident? No, you do have to report all of these incidents. If the motor vehicle accident occurs on a public street or highway, and does not occur in a construction work zone, you do not have to report the incident to OSHA. However, these injuries must be recorded on your OSHA injury and illness records, if you are required to keep such records.

(4) Do I have to report a fatality or multiple hospitalization incident that occurs on a commercial or public transportation system? No, you do not have to call OSHA to report a fatality or multiple hospitalization incident

168 FINAL REGULATIONS

if it involves a commercial airplane, train, subway or bus accident. However, these injuries must be recorded on your OSHA injury and illness records, if you are required to keep such records.

(5) Do I have to report a fatality caused by a heart attack at work? Yes, your local OSHA Area Office director will decide whether to investigate the incident, depending on the circumstances of the heart attack.

only report each fatality or multiple hospitalization incident that occurs within thirty (30) days of an incident.

(7) What if I don't learn about an incident right away? If you do not learn of a reportable incident at the time it occurs and the incident would otherwise be reportable under paragraphs (a) and (b) of this section, you must make the report within eight (8) hours of the time the incident is reported to you or to any of your agent(s) or employee(s).

(Cross Reference: 1904.39)

71-340 Providing records to government representatives.

(a) Basic requirement. When an authorized government representative asks for the records you keep under Subarticle 3, you must provide copies of the records within four (4) business hours.

(b) Implementation. (1) What government representatives have the right to get copies of my Subarticle 3 records? The government representatives authorized to receive the records are:

(i) A representative of the Secretary of Labor conducting an inspection or investigation under the Act;

(ii) A representative of the Secretary of Health and Human Services (including the National Institute for Occupational Safety and Health-NIOSH) conducting an investigation under section 20(b) of the Act; or

(iii) A representative of a State agency responsible for administering a State plan approved under section 18 of the Act.

(2) Do I have to produce the records within four (4) hours if my records are kept at a location in a different time zone? OSHA will consider your response to be timely if you give the records to the government representative within four (4) business hours of the request. If you maintain the records at a location in a different time zone, you may use the business hours of the establishment at which the records are located when calculating the deadline.

(Cross Reference 1904.40)

71-341 [Reserved]

71-342 Requests from the Bureau of Labor Statistics for data.

(a) Basic requirement. If you receive a Survey of Occupational Injuries and Illnesses Form from the Bureau of Labor Statistics (BLS); or a BLS designee, you must promptly complete the form and return it following the instructions contained on the survey form.

(b) Implementation. (1) Does every employer have to send data to the BLS? No, each year the BLS sends injury and illness survey forms to randomly selected employers and uses the information to create the Nation's occupational injury and illness statistics. In any year, some employers will receive a BLS survey form and others will not. You do not have to send injury and illness data to the BLS unless you receive a survey form.

(2) If I get a survey form from the BLS, what do I have to do? If you receive a Survey of Occupational Injuries and Illnesses Form from the Bureau of Labor Statistics (BLS), or a BLS designee, you must promptly complete the form and return it, following the instructions contained on the survey form.

(3) Do I have to respond to a BLS survey form if I am normally exempt from keeping OSHA injury and illness records? Yes, even if you are exempt from keeping injury and illness records under 71-301 to 71-303, the BLS may inform you in writing that it will be collecting injury and illness information from you in the coming year. If you receive such a letter, you must keep the injury and illness records required by 71-305 to 71-315 and make a survey report for the year covered by the survey.

(4) Do I have to answer the BLS survey form if I am located in a State-Plan State? Yes, all employers who receive a survey form must respond to the survey, even those in State-Plan States. (Cross Reference 1904.42).

Subpart F-Transition From the Former Rule

71-343 Summary and posting of the 2001 data.

- (a) Basic requirement. If you were required to keep OSHA 200 Logs in 2001, you must post a 2001 annual summary from the OSHA 200 Log of occupational injuries and illnesses for each establishment.
- (b) Implementation. (1) What do I have to include in the summary?
- (i) You must include a copy of the totals from the 2001 OSHA 200 Log and the following information from that form:
- (A) The calendar year covered;
 - (B) Your company name;
 - (C) The name and address of the establishment; and
 - (D) The certification signature, title and date.
- (ii) If no injuries or illnesses occurred at your establishment in 2001, you must enter zeros on the total line and post the 2001 summary.
- (2) When am I required to summarize and post the 2001 information?
- (i) You must complete the summary by February 1, 2002; and
 - (ii) You must post a copy of the summary in each establishment in a conspicuous place or places where notices to employees are customarily posted. You must ensure that the summary is not altered, defaced or covered by other material.
- (3) You must post the 2001 summary from February 1, 2002 to March 1, 2002. (Cross Reference 1904.43)

71-344 Retention and updating of old forms.

You must save your copies of the OSHA 200 and 101 forms for five years following the year to which they relate and continue to provide access to the data as though these forms were the OSHA 300 and 301 forms. You are not required to update your old 200 and 101 forms. (Cross Reference 1904.44).

71-345 [Reserved]

Subpart G—Definitions

71-346 Definitions.

The Act. The Act means the Occupational Safety and Health Act of Section 41-15-210 et. seq., Code of Laws of South Carolina, 1976. The definitions contained in Regulations Chapter 71, Article 1, Code of Laws of South Carolina and related interpretations apply to such terms when used in this Subarticle 3.

Establishment. An establishment is a single physical location where business is conducted or where services or industrial operations are performed. For activities where employees do not work at a single physical location, such as construction; transportation; communications, electric, gas and sanitary services; and similar operations, the establishment is represented by main or branch offices, terminals, stations, etc. that either supervise such activities or are the base from which personnel carry out these activities.

(1) Can one business location include two or more establishments? Normally, one business location has only one establishment. Under limited conditions, the employer may consider two or more separate businesses that share a single location to be separate establishments. An employer may divide one location into two or more establishments only when:

- (i) Each of the establishments represents a distinctly separate business;

170 FINAL REGULATIONS

- (ii) Each business is engaged in a different economic activity;
- (iii) No one industry description in the Standard Industrial Classification Manual (1987) applies to the joint activities of the establishments; and
- (iv) Separate reports are routinely prepared for each establishment on the number of employees, their wages and salaries, sales or receipts, and other business information. For example, if an employer operates a construction company at the same location as a lumber yard, the employer may consider each business to be a separate establishment.

(2) Can an establishment include more than one physical location? Yes, but only under certain conditions. An employer may combine two or more physical locations into a single establishment only when:

- (i) The employer operates the locations as a single business operation under common management;
- (ii) The locations are all located in close proximity to each other; and
- (iii) The employer keeps one set of business records for the locations, such as records on the number of employees, their wages and salaries, sales or receipts, and other kinds of business information. For example, one manufacturing establishment might include the main plant, a warehouse a few blocks away, and an administrative services building across the street.

(3) If an employee telecommutes from home, is his or her home considered a separated establishment? No, for employees who telecommute from home, the employee's home is not a business establishment and a separate 300 Log is not required. Employees who telecommute must be linked to one of your establishments under 71-330(b)(3).

(4) Is the definition of establishment any different for the State of South Carolina and any political subdivision thereof [public sector]? Yes, for public sector only, an establishment is either (a) a single location where a specific governmental function is performed; or (b) that location which is the lowest level where attendance or payroll records are kept for a group of employees who perform the same governmental functions or who are in the same specific organizational unit, even though the activities are carried on at more than a single physical location.

Injury or illness. An injury or illness is an abnormal condition or disorder. Injuries include cases such as, but not limited to, a cut, fracture, sprain, or amputation. Illnesses include both acute and chronic illnesses, such as, but not limited to, a skin disease, respiratory disorder, or poisoning. (Note: Injuries and illness are recordable only if they are new, work-related cases that meet one or more of the Subarticle 3 recording criteria.)

Physician or Other Licensed Health Care Professional. A physician or other licensed health care professional is an individual whose legally permitted scope of practice (i.e., license, registration, or certification) allows him or her to independently perform, or be delegated the responsibility to perform, the activities described by this regulation.

You. "You" means an employer as defined in Regulations Chapter 71, Article 1, Code of Laws of South Carolina, 1976.

The following are related revisions to Chapter 71, Article I, Subarticles 1, 2, and 5 as a result of the revision to Subarticle 3 above:

Replace the definition of "Establishment" in 71-102 O., 71-201 O., and 71-501 O. with the following:

O. "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. For activities where employees do not work at a single physical location, such as construction; transportation; communications, electric, gas and sanitary service; and similar operations, the establishment is represented by main or branch offices, terminals, stations, etc. that either supervise such activities or are the base from which personnel carry out these activities.

Remove and Reserve:

71-102 K., (the definition of “Recordable Occupational Injuries or Illnesses”)
71-102 L., (the definition of “Medical Treatment”)
71-102 M., (the definition of “First Aid.”)

Remove and Reserve:

71-201 K., (the definition of “Recordable Occupational Injuries and Illnesses”),
71-201 L., (the definition of “Medical Treatment”),
71-201 M., (the definition of “First Aid.”)

Remove and Reserve:

71-501 K., (the definition of “Recordable Occupational Injuries or Illnesses”)
71-502 L., (the definition of “Medical Treatment”),
71-502 M., (the definition of “First Aid”.)

Fiscal Impact Statement: There will be no cost incurred by the State or any political subdivision.

Resubmitted May 2, 2002

Document No. 2694
SOUTH CAROLINA LOTTERY COMMISSION
CHAPTER 44
Statutory Authority: 2001 Act No.59

44-10 – 44-130. South Carolina Education Lottery

Synopsis:

The South Carolina Education Lottery Act (Act 59 of 2001) requires the South Carolina Lottery Commission to promulgate regulations to carry out and implement its powers and duties to regulate the conduct and operation of lottery games. The proposed regulations will provide the Commission with necessary policies and procedures to organize and operate the Commission, regulate the conduct of lottery games, and address other matters necessary and desirable for the efficient and effective operation of the lottery for the public convenience.

Sections 44-10 through 44-130 address the purpose of the new regulations, its applicability, requirements, and definitions.

44-10 Defines the meaning of words and terms used throughout SCEL regulations.

44-20.10 Establishes general licensure provisions. Authorizes the Executive Director to issue lottery licenses. Requires an applicant to file an application. Provides that the issuance of a lottery license is a privilege which is subject to suspension, revocation, or termination as provided in Section 59-150-150(B)(4).

44-20.20 Establishes that an applicant for a lottery license may not be approved if: (1) the business is to be solely engaged in the sale of lottery products; (2) the gross revenues of the business from the sale of lottery tickets is more than 60%; (3) the applicant is under 21 years of age; (4) a foreign corporation is not registered in South Carolina; or (5) the business is ineligible pursuant to the Education Lottery Act or regulations or rules of SCEL.

172 FINAL REGULATIONS

44-20.30 Provides that a criminal background check must be performed on certain applicants applying for retail lottery licenses, including operational managers and employees of businesses selling lottery products.

44-20.40 Authorizes the Executive Director to license lottery retailers for a period of time of not less than one year. For purposes of licensure, the Executive Director shall consider the following: (1) the moral character and reputation of the applicant; (2) the financial responsibility of the applicant's business; (3) the accessibility of the applicant's business to the public; (4) the number and sufficiency of businesses selling lottery products; (5) the expected volume of lottery game sales; (6) the security and efficient operation of the Lottery; (7) the eligibility of the applicant to be licensed under the Act; (8) whether the applicant's application is truthful; (9) whether the applicant is current on his/her state tax; and (10) whether the applicant owes an unpaid debt to SCEL.

44-20.50 Provides that licenses shall be renewed annually and renewals may be staggered, but all applications for renewal must be returned to SCEL 30 days prior to expiration. The Executive Director may issue a license pending a final determination of eligibility for licensure.

44-20.60 Provides the justification for the Executive Director to cancel, revoke, suspend, terminate, or deny the renewal of a license as required by the Act. Some of the reasons include: (1) selling a ticket at a price greater than that authorized by the Commission; (2) selling a lottery ticket to a person under 18 years of age; (3) accepting anything other than cash for a lottery ticket; (4) transferring ticket stock without consent of SCEL; (5) selling lottery tickets at a location that is not on the license certificate; (6) material misrepresentation on an applicant's application for licensure; (7) failure to properly notify, report, or settle accounts with SCEL regarding lottery tickets; (8) failure to display license and display material; and (9) failure to report a conviction of any felony or a crime related to gambling during the term of the license.

44-20.70 Provides that licenses may not be transferred and lottery game tickets may only be sold by the retailer named on the license or his employee or agent.

44-30 Authorizes the Executive Director to enter into a contract with a lottery retailer for the sale of lottery tickets or refuse to renew or license a retailer. A retailer may appeal an adverse decision of the Executive Director regarding licensing to the Commission and appeal an adverse decision of the Commission to the Administrative Law Judge Division. SCEL is also authorized to establish a weekly fee for online services to recoup some of the cost of administering the online services and associated telecommunication charges. No retailer who sells only instant tickets may be charged an online fee.

44-40.10 Authorizes SCEL to select, operate, and contract for the operation of instant games and establishes the criteria for instant games including types of games, maximum cost of tickets, frequency of ticket drawings and additional special prize drawings. The price of a ticket shall not be more than \$10. Winning tickets are determined by matching or specified alignment of numbers, digits, and symbols on the tickets. The Commission shall determine the numerical frequency and prize amounts for winning tickets. Also provides procedures for claiming instant prizes are established and retailers are required to pay prizes up to and including \$500 during normal business hours. Prizes may be paid up to 90 days after the end of the official game and retailers must return all unopened tickets for each game within 30 days of the game ending. SCEL has no obligation to grant credit for tickets not returned more than 30 days after the official game ends.

44-40.20 Provides that an instant ticket must pass validation requirements to be eligible for a prize. Some of the requirements for validation include: (1) the ticket must be issued as authorized by the Executive Director; (2) the ticket may not be altered, mutilated, unreadable, reconstructed, or tampered with; (3) the ticket is not counterfeit; (4) the ticket is not stolen; (5) the ticket is complete and not blank or partially blank; and (6) the ticket passes all additional confidential validation requirements. Once validated, a lottery retailer must deface the ticket in a manner as prescribed by the Executive Director.

44-50.10 Authorizes SCEL to select, operate, and contract for the operation of online games and establishes the criteria for instant games including types of games, maximum cost of tickets, frequency of ticket drawings and additional special prize drawings. The price of a ticket shall not be less than \$0.50. Also provides procedures for claiming instant prizes are established and retailers are required to pay prizes up to and including \$500 during normal business hours. Retailers may pay prizes in cash, or business check, certified check, money order, or a combination thereof. Prizes may also be claimed by submitting a winning ticket to SCEL for validation and payment. Prizes may be paid up to 180 days after the drawing in which the prize was won.

44-50.20 Provides that the Executive Director shall determine the location, times, and days of prize drawings, including the equipment to be used to establish randomly selected winning combinations. Also, the Executive Director is required to establish procedures governing the conduct of drawings for each online game. This includes procedures to be used when a mechanical failure occurs resulting in a foul called by the drawing representative. The Executive Director shall delay payment of all prizes if any evidence of tampering or fraud has occurred until an investigation is completed and the drawing is certified.

44-50.30 Provides that a winning online ticket must meet all of the following conditions to be validated: (1) All printing on the ticket shall be present in its entirety, be legible and correspond, using the computer validation file, to the combination and date printed on the ticket. (2) The ticket must be intact. (3) The ticket shall not be altered, mutilated, unreadable, reconstructed, or tampered with. (4) The ticket shall not be counterfeit. (5) The ticket must have been sold by a lottery retailer. (6) The ticket shall not have been stolen or canceled. (7) The ticket shall not have been previously paid. (8) The ticket shall pass all confidential security checks

44-55 Provides that SCEL may enter into a multi-state agreement for the sale of instant game tickets, online game tickets, and other such related products including game shows and promotional products as authorized by Section 59-150-59. Rules governing the sales, validation and redemption of prizes shall be governed by the multi-state agreement entered into on behalf of SCEL.

44-60 Requires that the Executive Director submit to the Commission a draft of all online game rules. The Commission may adopt or modify the online game rules as necessary for the efficient and effective operation of the lottery.

44-70 Prohibits the award of a prize to an individual who is not 18 years of age and who has not completed and signed a claim form. In the event that a group of people win a prize, the group must designate one person to file the claim. No prize will be paid by the lottery for a prize that is not claimed within the required time. The lottery may deny awarding a prize to a claimant if the ticket is printed or produced in error.

44-80 Authorizes the Executive Director to make lawful payment on a claim to someone other than the purchaser, if certain conditions exist. SCEL may pay a claim to a court-appointed guardian, executor, administrator, receiver, or other court-appointed assignees. The Executive Director may pay prizes to a decedent's estate or petition the court to determine the payee for a decedent.

44-90.10 Provides that all retailers must make payments to SCEL for lottery sales by using Electronic Funds Transfer (EFT). The retailer must deposit proceeds from lottery sales into the special account as required by SCEL. The Executive Director may revise the times of deposit as necessary for the efficient operation of the lottery.

44-90.20 Provides that a lottery retailer may have his license suspended for failing to timely deposit funds into his or her EFT account for the payment of lottery games. SCEL may assess the following penalties: (1) for a first occurrence in a twelve-month period shall be a written warning of the future consequence of such actions; (2) for a second occurrence in a twelve-month period the Executive Director shall suspend all lottery activity for up to seven days and assess a fine of not less than \$100 nor more than 10% of the average gross proceeds from the last 10 weeks; (3) for a third occurrence in a twelve-month period the Executive Director shall

174 FINAL REGULATIONS

suspend all lottery activity for up to seven days and assess a fine of not less than \$300 nor more than 20% of the average gross proceeds from the last 10 weeks. The Executive Director may exercise discretion in determining whether the provisions of this section have been violated.

44-90.30 Requires that SCEL create certain financial accounts for the efficient operation of the lottery as required by the Act. Also provides for the use of such accounts and requires that no less than 45% of the gross proceeds from the sale of lottery games for the payment of prizes.

44-90.40 Authorizes the Executive Director to require a retailer to post a bond or other appropriate security as proof of financial responsibility. The Executive Director shall determine the amount and the form of any required bond.

44-100 Individuals may be required to use identifying numbers on payments, statements and transactions with SCEL.

44-110 Requires lottery retailers to provide information to SCEL in a form prescribed by SCEL.

44-120 The Executive Director is responsible for providing certain daily, monthly and annual reports as may be requested by the Commission.

44-130 Authorizes SCEL to enter into licensing agreements for the use of trademarks or other copyrighted materials. SCEL may allow lottery retailers to use and display the Lottery logo, trademark, and other advertising materials without charge.

44-140 Provides that regulations may not be construed to allow any lottery or lottery games prohibited by the Act.

Instructions: Add new R.44-10 through 44-130, South Carolina Lottery Commission, to new Chapter 44.

Text:

44-10. Definitions.

- A. "Act" means the South Carolina Education Lottery Act (Act 59 of 2001).
- B. "Applicant" means a corporation, partnership, unincorporated association, or other legal entity.
- C. "Bank" means and includes all commercial banks, mutual savings banks, savings and loan associations, credit unions, trust companies, and any other type or form of banking institution organized under the authority of the State of South Carolina or the United States of America whose principal place of business is within the State of South Carolina and which is designated to perform banking institution functions, activities, or service in connection with the operations of SCEL for the deposit and handling of lottery funds, the accounting of the funds and the safekeeping of records.
- D. "Bar code validation" means a system which allows any winning lottery ticket, printed with computer readable bar codes, for a prize of up to \$500, or other amount as directed by the Commission, to be read electronically at any lottery retailer location and paid by the retailer regardless of where the player purchased the ticket.
- E. "Certified Drawing" means a number selection event about which SCEL and an independent certified public accountant attest that the drawing equipment functioned properly and that a random selection of a winning combination occurred.
- F. "Commission" or "Board" means the South Carolina Lottery Commission (SCEL) created by the Act, as and if amended.
- G. "Depository" means any entity, including a bank or state agency, performing activities or services in connection with the operation of the SCEL for the deposit and handling of lottery funds, the accounting for lottery funds, and the safekeeping of tickets.

H. "Drawing" means the procedure determined by the Commission to select the winning combination in accordance with the game rules of the particular lottery game.

I. "Employee" means a person who is an employee of the Commission unless the context clearly indicates otherwise.

J. "Executive Director" means the individual appointed by the Commission to initiate, supervise, and administer the operation of SCEL games.

K. "Game" means any individual or particular type of lottery authorized by the Commission pursuant to the Act including but not limited to instant game tickets and online game tickets.

L. "Instant Game" means a game in which a ticket is purchased and upon removal of a latex covering or other covering on the front of the ticket or the opening of the sealed ticket, the ticket bearer determines his or her winnings, if any, which are payable upon presentation to a lottery retailer or to SCEL for payment.

M. "Instant Ticket" means a printed card or slip purchased for participation in an instant game.

N. "Lottery" or "SCEL" means the South Carolina Lottery Commission, the Commissioners, and the Executive Director which operates and administers the South Carolina Education Lottery Act.

O. "Lottery Game" means the public gaming system or games established and operated by SCEL.

P. "Lottery Retailer" means any person licensed by SCEL to sell and dispense instant tickets and materials or lottery games, not to include operation of electronic computer terminals in lottery sales and dispensing, unless otherwise authorized.

Q. "Lottery Ticket" or "Tickets" means tickets or other tangible evidence of participation used in lottery games pursuant to the Act.

R. "Online Game" means a lottery game in which a player pays a fee to a lottery retailer and selects a combination of digits, numbers, or symbols, the type and amount of play, and the drawing date, and receives a computer-generated ticket with those selections printed on it.

S. "Online Terminal" means the electronic computer terminal through which a lottery retailer enters the combination of digits, numbers, or symbols selected by a player and by which online tickets are generated and claims are validated.

T. "Online Ticket" means a computer-generated ticket issued by a lottery retailer to a player as a receipt for the combination of digits, numbers, or symbols a player has selected.

U. "Person" means a human being, association, corporation, club, trust, estate, society, governmental entity, company, joint stock company, receiver, trustee, assignee, referee, and anyone acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of human beings.

V. "Prize" means any award, financial or otherwise, awarded by the Commission.

W. "Ticket Bearer" means the person who has signed the ticket or has possession of the unsigned ticket.

X. "Ticket Number" means the preprinted number found on the back of each ticket which identifies that particular ticket as one (1) of a series of tickets.

Y. "Ticket Pack Number" means the printed number or numbers appearing on the back of each ticket.

Z. "Unclaimed Prize" means the prize on a winning ticket for which no claim is made within 180 days after the drawing or winner selection event which made the ticket a winning ticket.

AA. "Unclaimed Prize Account" means the SCEL account to which unclaimed prizes are transferred.

BB. "Validation" means the process of determining whether an instant or online ticket presented for payment is a winning ticket.

CC. "Validation Number" means the multi-digit number found on the face of the ticket. There must be a validation number on each ticket.

DD. "Winner of an instant game" means the holder of an instant lottery ticket determined to have the required match or the specific alignment of the play numbers, digits or symbols or the required sum of the play numbers or digits in accordance with the game rules for the specific game.

EE. "Winner selection" means the drawing process used by SCEL to select the winning numbers in online games with live drawings.

FF. "Winning Combination" means numbers or symbols chosen during the drawing process used by SCEL to select the winning numbers in online games with live drawings.

44-20.10. Licensing.

176 FINAL REGULATIONS

A. Pursuant to Section 59-150-40(H), the Commission delegates to the Executive Director the authority to issue lottery retail sales licenses as provided in Section 59-150-150(A). Lottery retailers must meet the security and integrity standards of the Commission, the statutory and regulatory requirements for licensing, promote the sale of lottery games and promote the best interest of the Lottery and South Carolina.

B. An applicant interested in obtaining a license as a lottery retailer must submit an application with the Executive Director on a form supplied for that purpose by the Executive Director. The retail sales application shall be designed to solicit sufficient relevant information from an applicant to permit the Executive Director to evaluate the applicant and the sales location as required by the Education Lottery Act and regulations for issuance of a license by the Commission.

C. The license issued for a lottery retail sales location is a privilege and does not create a property interest and is not a legal right. The license and lottery retailer contract is subject to suspension, revocation or termination by the Executive Director as provided in Section 59-150-150(B)(4). Upon demand, a lottery retail sales license must be surrendered to the Executive Director.

44-20.20. Eligibility for licensing.

- A. An application for licensure as a lottery retailer may not be approved if:
- (1) the business is to be solely engaged in the sale of lottery products;
 - (2) the annual gross revenue of the business from the sale of lottery games or shares accounts for more than sixty percent (60%) of the annual gross revenue of the business;
 - (3) the applicant is under the age of twenty-one (21);
 - (4) a foreign corporation is not currently registered to do business within South Carolina; or
 - (5) the business is ineligible pursuant to the Act or the regulations or policies established by the Commission.

44-20.30. Background Investigations for Licensing.

A. For purposes of the criminal background investigation required by Sections 59-150-150(C) and 59-150-165(C), "the operational manager" is the employee who has day-to-day operational management responsibilities for the business or entity. As provided in Section 59-150-165(C)(2), the Commission finds and determines that the operational manager is one of the appropriate employees on whom a criminal background investigation must be conducted unless otherwise directed by the Commission. For purposes of retail sales licensing, the operational manager is deemed to be the employee who is designated by the applicant as the employee responsible and accountable for the overall supervision of the lottery operation for the applicant that is seeking licensure for one or more retail locations. This employee must have decision-making authority for lottery transactions, including but not limited to, the authority for placing ticket orders with the Commission or the authority to designate the employees to transact business with the Commission. An applicant may elect to include an operational manager for each retail location but is not required to do so. The operational manager(s) must be designated on the retailer license application.

B. In the case of an applicant doing business as a sole proprietorship, the sole proprietor must undergo a background investigation required by Section 59-150-165(C).

C. In addition to the criminal background investigation provided for operational managers by Section 59-150-165(C)(2)(e), a criminal background investigation must be performed on all principals of the person (applicant). For purposes of this investigation unless otherwise specified by the Commission, "principal" means:

- (1) the directors and officers of an association;
- (2) all partners of a partnership, limited partnership, or limited liability partnership;
- (3) all members of a limited liability company, or if the company is a manager-managed company, all members and managers;
- (4) all trustees of a trust; and
- (5) for a corporation, its directors, officers, and stockholders with a ten percent or more direct or beneficial interest or any person or entity that receives more than ten percent of the net income.

D. If a corporation is a member of a controlled group of corporations, as defined in 26 U.S.C. 1563, or a member of an affiliated group of corporations, as defined in 26 U.S.C. 1504, and at least one member of the group of corporations is a publicly-held corporation, only the corporation which seeks the retailer contract pursuant to this chapter is considered a principal for purposes of this chapter, along with its directors, officers, and stockholders as described in subsection (C)(5) of this section.

(1) For purposes of this section, “publicly-held corporation” means a corporation:

- (a) whose shares are traded on a national exchange; and
- (b) whose total assets at the end of the corporation's most recent fiscal quarter exceeded one billion dollars.

E. The individuals identified in subsection (A) of this section for each respective applicant must (1) be listed on the Retail Sales Application and (2) undergo a background investigation conducted by the South Carolina Law Enforcement Division.

If the headquarters of the corporation or other business entity listed in subsection (A) is not located in South Carolina or if the business is not organized pursuant to South Carolina law, the applicant must identify the highest ranking employee of the entity who is a South Carolina resident on the retail sales application. The name, date of birth, Social Security number, title and address of this employee must be included on the Retail Sales Application and this individual must undergo a criminal background investigation as provided in this section. If this employee is also the operational manager, the applicant (business entity) does not need to designate an additional employee for purposes of a background investigation.

F. The Executive Director is granted the discretion to exercise judgment, consistent with the intent of these regulations, to determine which individuals should undergo a criminal background investigation when a combination of business entities or sub entities are organized or arranged in such a way as to not precisely conform with the provisions of subsection (C) or (D). The Executive Director, upon information or belief, may require additional background or follow-up investigative work to be conducted when, in his or her discretion, the integrity or security of the Lottery warrants such action.

44-20.40. Issuance of licenses.

A. Upon receipt, review and investigation of an application and applicant background, the Executive Director may issue a lottery retail sales license for the sale of lottery games in accordance with the Act and these regulations for a period of time not less than a year. The Executive Director shall license only those retail sales locations which will best serve the public interest and public trust in the lottery and promote the sale of lottery games. The Executive Director shall consider the following factors for licensure and renewal:

- (1) The moral character and reputation of the applicant;
- (2) The financial responsibility and security of the applicant's business or activity;
- (3) The accessibility of the public to the licensed premises proposed by the applicant;
- (4) The number and sufficiency of existing licenses to serve the public interest;
- (5) The expected volume of lottery game sales;
- (6) The security and efficient operation of the Lottery;
- (7) Whether the applicant is ineligible under any provisions of the Education Lottery Act;
- (8) Whether the applicant has provided false or misleading information or has misrepresented information regarding qualifications or fitness for licensure;
- (9) Whether the applicant is currently licensed to do business within the State of South Carolina and whether the applicant is current in state tax payments and the filing of state tax returns; and
- (10) Whether any person listed on the application owes an unpaid debt to the Lottery.

44.20.50. License term and renewal, fees.

A. Every holder of a license shall renew the license annually. Renewal applications shall be returned to SCEL thirty (30) days prior to the expiration of the license to be considered a timely application. The Executive Director may revise the established renewal dates to allow renewals to be staggered on a monthly basis.

B. Pending a final resolution of any question arising in respect to a licensing decision, the Executive Director may issue a license subject to any terms and conditions he or she considers appropriate.

44-20.60. Revocation; grounds for removal or suspension of license or non-renewal of license.

A. If, at any time after issuance of a license, it is determined by the Executive Director that a lottery retailer no longer meets the standards for licensure, the Executive Director or his designee may cancel, suspend, revoke, terminate or deny renewal of a license or contract, upon giving notice to the lottery retailer. The suspension shall remain in effect until the reason for suspension has been abated or cured, or in the alternative, the Executive Director may revoke the license.

178 FINAL REGULATIONS

B. If the lottery retailer fails to observe and comply with the procedures and regulations of the Commission or with the provisions of the Act, or orders or instructions of the Executive Director, the license and/or contract may be canceled, suspended, revoked or terminated.

C. Additional grounds for suspension or revocation of license:

(1) The Executive Director may suspend or revoke the license of a lottery retailer who does not comply with the Act and all rules, conditions, standards and other policies adopted, promulgated or issued under the Act, by the Commission or the Executive Director.

(2) The Commission or Executive Director may suspend or revoke the license of any lottery retailer who violates one of the following prohibitions:

(a) Selling a ticket at a price greater than or less than that stated by the Commission.

(b) Selling a ticket at a location or premises different than that shown on the license certificate.

(c) Permitting the sale of tickets by someone other than the retailer's employees or agents.

(d) Selling a ticket to a person under eighteen (18) years of age.

(e) Inviting, soliciting, demanding, or offering or accepting any payment, contribution, favor, or other consideration to influence the award, renewal or retention of a license, directly or indirectly, on behalf of himself or herself or another corporation.

(f) Accepting anything other than cash for the sale of a ticket.

(g) Transferring ticket stock, used for online terminals, between stores unless prior written consent is granted by the Executive Director or his or her designee.

(h) Transferring instant tickets between individual stores unless prior written consent is granted by the Executive Director or his or her designee.

(i) Selling any lottery ticket, lottery chance or lottery product unless the game being sold is approved by the Commission.

D. The Executive Director may suspend the license or suspend operation or revoke the license of a retail sales location(s) of a lottery retailer for any of the following:

(1) Material misrepresentation in connection with his or her application for a license, in any of his or her reports, or to any person in connection with a lottery transaction;

(2) Engaging in the sale of lottery tickets as his or her sole business, occupation or activity;

(3) Failure to take adequate security precautions for the safe handling of tickets, lottery materials or ticket sales proceeds due from the lottery retailer's ticket sales;

(4) Failure to regularly, promptly and accurately settle the accounts of his or her lottery transactions and pay the amounts due from the lottery retailer's ticket sales;

(5) Failure to notify the Executive Director of any change in ownership ten days prior to any proposed change in ownership;

(6) Failure to open his or her books or records for reasonable inspection by the Commission, the Executive Director or his or her designee during normal business hours;

(7) Failure to display his or her license or required advertising and display material;

(8) Failed to make a report of a violation of the Act, these regulations, the policies or procedures required by the Commission or the Executive Director; or

(9) Failure to report a conviction of any felony or a crime related to theft or gambling, during the term of his or her license. If a lottery retailer is convicted of a felony or a gambling-related offense, the lottery retailer shall within fourteen (14) days, notify the Executive Director, in writing, of the conviction and the offense. For purposes of this section, a lottery retailer includes the operational manager or an individual or person who holds an ownership interest requiring a criminal background investigation as provided in R.44-30.

44-20.70. License transfers prohibited.

A. No license may be transferred or assigned.

B. Lottery games may be sold only by the lottery retailer named on the license or by an employee or agent of the retailer named on the license and only at the location named on the lottery retailer license.

44-30. Contract.

A. The Executive Director shall enter into a contract for each approved lottery retail sales location. The contract shall set out the duties, responsibilities, and obligations pertaining to the parties to the contract. The contract shall

continue in effect during the period in which the retailer complies with applicable statutes, rules, fee requirements, and any other duties or requirements under the terms of the contract, the Act or these regulations.

B. A party to a retail contract pursuant to the Act, which is aggrieved by an action of the Executive Director or his or her designee must receive notice of a right to a hearing and be afforded a hearing within sixty (60) days of the date of notice. An appeal of the Executive Director's decision is to the Commission and then to the Administrative Law Judge Division.

C. As provided in the lottery retailer contract, a lottery retailer shall pay a weekly fee for each dedicated telephone line provided by SCEL to partially defray and recoup the cost of the telephone line and associated telecommunication charges.

D. SCEL may not charge an online service fee to a retailer who sells only instant tickets.

44-40.10. Instant games.

A. The Commission authorizes the Executive Director to select, operate, and contract to and for the operation of instant games which meet the criteria generally set forth in this section.

(1) Instant game criteria.

(a) The price of an instant game ticket shall not be more than ten dollars (\$10.00) unless otherwise approved by the Commission.

(b) Winners of an instant game are determined by the matching or specified alignment of the play numbers, digits and symbols on the tickets. The ticket bearer shall notify SCEL of the win and submit the winning ticket as specified by the Executive Director. The winning ticket shall be validated by SCEL through the use of the validation number and any other means as specified by the Commission.

(c) The instant game shall be designed to pay out prizes in amounts on a numerical frequency to be determined by SCEL.

(d) The duration of ticket sales for an instant game shall be determined by SCEL. The start date and closing date of the instant game shall be publicly announced.

(e) The frequency and determination of a winner in any instant game shall be determined by SCEL in specific game rules.

(f) At SCEL's discretion, an instant game may include a special prize drawing or drawings that make use of the nonwinning instant tickets, so as to encourage nonwinners to accumulate their tickets instead of disposing of them. SCEL shall establish procedures for the additional games.

B. Procedures for claiming instant prizes:

(1) A claimant may present the winning ticket for a prize not exceeding five hundred dollars (\$500) to any lottery retailer or mail the signed ticket to SCEL for payment. If the lottery retailer validates the claim as a valid winner, the lottery retailer must make payment of the amount due the claimant. Prizes shall be paid during the normal business hours of lottery retailer. If the lottery retailer cannot validate the claim, the claimant shall fill out a SCEL claim form and present or mail the completed form, together with the disputed ticket to SCEL. A check shall be forwarded to the claimant in payment of the amount due if the claim is validated. In the event that the claim is not validated, the claimant shall be promptly notified that the claim is denied.

(2) The claimant of a prize of more than five hundred dollars (\$500) shall complete a claim form and mail or present the form together with the winning ticket to SCEL. Upon validation, a check shall be forwarded to the claimant in payment of the amount due. SCEL will deduct from the amount due any applicable federal and state income tax withholdings and any withholding required by Section 59-150-330. In the event that the claim is not validated, the claim shall be denied and the claimant shall be promptly notified that the claim is denied.

(3) Any ticket not passing all the validation checks is invalid and ineligible for payment as a prize. The Executive Director may, solely at his or her option, replace an invalid ticket with an unplayed ticket or tickets of equivalent sales price from any other current game or issue a refund of the sales price. If a defective ticket is purchased, the only responsibility or liability of SCEL is the replacement of the defective ticket with another unplayed ticket or tickets of equivalent sale price from any other current game.

(4) A lottery retailer may pay prizes in cash or by business check, certified check, money order or a combination thereof. A lottery retailer that pays a prize with a check which is dishonored, in addition to full payment of the amount of the check and all nonsufficient funds charges and any other legitimate banking charge, may be subject to suspension or revocation of its license. SCEL may not impose a monetary fine against a retailer who issues a check or other negotiable instrument that is dishonored for the payment of a prize.

180 FINAL REGULATIONS

C. Official end of game.

(1) SCEL shall announce the official end of each instant game. A ticket may be validated for prize payment up to ninety (90) days after the official end of game. In order to participate in a special prize drawing, a player shall redeem a ticket which qualifies for entry into that special prize drawing within the time limits governing the conduct of that specific game.

(2) A lottery retailer may continue to sell tickets for each instant game up to ninety (90) days after the official end of that game.

(3) A lottery retailer may return to SCEL full or partial packs of unsold lottery tickets for each game within thirty (30) days of the official end of that game in order to receive credit from SCEL as provided for in the retailers' contract. Partial pack returns shall be allowed when a retailer closes a business, changes ownership, or other criteria approved by the Executive Director. The Lottery has no obligation to grant credit for tickets returned more than thirty (30) days after the last day that a ticket may be sold.

44-40.20. Instant ticket validation requirements.

A. Any instant ticket not passing all the validation requirements in this subsection and the specific validation requirements contained in the rules for its specific game is invalid and ineligible for any prize. (1)

To be a valid lottery instant game ticket, an instant ticket shall meet all of the following validation requirements:

(a) The instant ticket was issued by the Executive Director in an authorized manner;
(b) The instant ticket is not to be altered, mutilated, unreadable, reconstructed, or tampered with in any manner;

(c) The instant ticket is not counterfeit in whole or in part;

(d) The instant ticket is not stolen nor appears in any list of omitted instant tickets on file with SCEL;

(e) The instant ticket is complete and not blank or partially blank, miscut, misregistered, defective, or printed or produced in error;

(f) The instant ticket has the correct number of play symbols and exactly one (1) caption under each of the rub-off spots, exactly one legend (1) pack-ticket number, exactly one legend (1) verification code, exactly one legend (1) validation number and exactly one legend (1) readable bar code. The symbols must be present in their entirety, legible, right-side up, and not reversed in any manner;

(g) The validation number of an apparent winning ticket appears on SCEL's official list of validation numbers of winning instant tickets; and an instant ticket with that validation number has not been previously paid; and,

(h) The instant ticket passes all additional confidential validation requirements established by the Executive Director.

B. Any instant ticket not passing all the validation requirements in this section and the specific validation requirements contained in the rules for its specific game is invalid and ineligible for any prize.

C. Once validated, a lottery retailer must deface the instant ticket in the manner prescribed by the Executive Director or his designee.

44-50.10. Online games.

A. The Commission authorizes the Executive Director to select, operate, and contract for the operation of online games which meet the criteria generally set forth in this subsection.

(1) The base price of an online ticket shall not be less than fifty cents (\$0.50).

(2) The manner and frequency of drawings may vary with the type of online games.

(3) The times, locations, and drawing procedures shall be determined by the Executive Director.

B. A ticket bearer entitled to a prize shall submit the winning ticket for validation. The winning ticket shall be validated as required by the Executive Director.

C. An online game may include a special prize drawing which will stimulate the broad variety of games offered by the Lottery.

D. Procedures for claiming online prizes are as follows:

(1) For a game prize that does not exceed five hundred dollars (\$500.00), the claimant shall present the ticket within one hundred eighty (180) days of the drawing to a lottery retailer or to SCEL for payment.

(2) If the claim is presented to a lottery retailer, the lottery retailer shall validate the claim. If the ticket is determined to be a winning ticket, the lottery retailer shall make payment of the amount due the claimant. If the lottery retailer cannot validate the claim, the claimant may obtain and complete a claim form and submit it with the disputed ticket to SCEL by mail or in person. Upon determination that the ticket is a winning ticket, SCEL shall present or mail a check to the claimant in payment of the amount due. Prizes shall be paid during all normal business hours of the lottery retailer, provided, the online system is operational and claims can be validated. If the ticket is determined to be a nonwinning ticket, the claim shall be denied and the claimant shall be promptly notified. Nonwinning tickets shall not be returned to the claimant.

E. If the claim is presented to SCEL, the claimant shall complete a claim form, as provided by the Executive Director, and submit it with the winning ticket to SCEL by mail or in person. Upon determination that the ticket is a winning ticket, SCEL shall present or mail a check to the claimant in payment of the amount due, less any applicable federal and state income tax withholdings and less any withholding required by Section 59-150-330. If the ticket is determined to be a nonwinning ticket, the claim shall be denied and the claimant shall be promptly notified. Nonwinning tickets shall not be returned to the claimant.

F. To claim an online prize of more than five hundred dollars (\$500), within the limit of one hundred eighty (180) days after the date of the drawing, the claimant shall obtain and complete a claim form, as provided by the Executive Director, and submit it with the winning ticket to SCEL by mail or in person. Upon determination that the ticket is a winning ticket, SCEL shall present or mail a check to the claimant in payment of the amount due, less any applicable federal and state income tax withholdings and any withholdings required by Section 59-150-330. If the ticket is determined to be a nonwinning ticket, the claim shall be denied and the claimant shall be promptly notified. Nonwinning tickets shall not be returned to the claimant.

G. A lottery retailer may pay prizes in cash or by business check, certified check, money order or a combination thereof. A lottery retailer that pays a prize with a check which is dishonored, in addition to full payment of the amount of the check and all nonsufficient funds charges and any other legitimate banking charge, may be subject to suspension or revocation of its license. SCEL may not impose a monetary fine against a retailer who issues a check or other negotiable instrument that is dishonored for the payment of a prize.

44-50.20. Drawing and end of sales prior to drawings.

A. Prize drawings shall be conducted in a location and at days and times designated by the Executive Director.

B. The Executive Director shall announce the time for the end of sales prior to the drawings for each type of online game. Lottery retailers shall not process orders for online tickets for that drawing after the time established by the Executive Director.

C. The Executive Director shall designate the type of equipment to be used, shall establish procedures to randomly select the winning combinations for each type of online game, and shall require the presence of an independent accountant or other suitable individual to witness all pre- and post-drawing tests, and the drawing or winner selection.

D. The Executive Director or his designee shall test the equipment used to determine the winning combination prior to and after each drawing to assure proper operation and lack of tampering or fraud. Drawings shall not be certified until all validation checks are completed. No prizes shall be paid until after the drawing is certified.

E. All online drawings shall be broadcast live on television provided the facilities for broadcasts are available and operational.

F. The Executive Director shall establish procedures governing the conduct of drawings for each type of online game. The procedures shall include provisions for deviations which include but are not limited to:

- (1) A drawing equipment malfunction before validation of the winning combination;
- (2) A video and/or audio malfunction during the taping of the drawing;
- (3) A fouled drawing;
- (4) A delayed drawing; or
- (5) Other equipment, facility and/or personnel difficulties.

G. The drawing shall be completed under SCEL supervision whenever a deviation occurs. The drawing shall be video taped for later broadcast, if broadcast time is available. The drawing shall be certified and the deviation documented on the certification form. The winning combination shall be provided to the media for dissemination to the public.

182 FINAL REGULATIONS

H. If, during any live-broadcast drawing for a game, a mechanical failure or operator error causes an interruption in the selection of all digits or symbols, a "Foul" shall be called by SCEL. Any digit or symbol drawn prior to a "Foul" being called shall stand and be declared official after passing lottery validation tests.

I. The Executive Director shall delay payment of all prizes if any evidence exists, or there are grounds for suspicion, that tampering or fraud has occurred. Payment shall be made after an investigation is completed and the drawing certified. If the drawing is not certified, another drawing shall be conducted to determine the actual winner.

44-50.30. On-line ticket validation requirements.

A. To be a valid winning online ticket, all of the following conditions shall be met:

(1) All printing on the ticket shall be present in its entirety, be legible, and correspond, using the computer validation file, to the combination and date printed on the ticket. The ticket is not valid unless the ticket number and other information are recorded in the SCEL computer and transaction master file;

(2) The ticket shall be intact;

(3) The ticket shall not be altered, mutilated, unreadable, reconstructed, or tampered with in any manner;

(4) The ticket shall not be counterfeit or an exact duplicate of another winning ticket;

(5) The ticket shall have been issued by an authorized lottery retailer in an authorized manner;

(6) The ticket shall not have been stolen or canceled;

(7) The ticket shall not have been previously paid; and

(8) The ticket shall pass all other confidential security checks of SCEL.

B. Any ticket failing any validation requirements is invalid and ineligible for a prize.

C. The Executive Director may replace an invalid online ticket with an online ticket for a future drawing of the same game. The Executive Director may pay the prize for a ticket that is partially mutilated or is not intact if the online ticket can still be validated by the other validation requirements, at his or her discretion.

D. In the event a defective online ticket is purchased, the only responsibility or liability of SCEL or the lottery retailer is the replacement of the defective online ticket with another online ticket for a future drawing of the same game.

44-55. Multi-State online games.

A. SCEL may enter into a multi-state agreement for the sale of instant game tickets, online game tickets, and other such related products including game shows and promotional products as authorized by Section 59-150-59. Rules governing the sales, validation and redemption of prizes shall be governed by the multi-state agreement entered into on behalf of SCEL.

44-60. Game rules.

A. The Executive Director shall provide Commission members with draft copies of any additional game rules prior to the beginning of the online games. The Commission may adopt or modify the proposed rules as may be necessary for the efficient and effective operation of the online games.

44-70. Claiming prizes.

A. A claim shall be entered in the name of a single natural person. A guardian may claim a prize if the ticket was received as a gift. No claim may be paid to an individual who is not eighteen (18) years of age. Groups, family units, organizations, clubs or other organizations shall designate one individual in whose name the claim is to be entered.

B. Unless otherwise provided in the rules for a specific type of game, a claimant shall sign the back of the ticket and complete and sign a claim form provided by the Executive Director. The claimant shall submit the claim form and claimant's ticket to SCEL in accordance with the instructions as stated on the claim form and on the back of the ticket. If there is a difference or conflict in the name appearing on the ticket and the claim form, the name which appears on the ticket controls.

C. The claimant, by submitting the claim, agrees to discharge the State, SCEL, its officials, officers and employees of all further liability upon payment of the prize.

- D. A prize must be claimed within the time limits prescribed by the Executive Director.
- E. The Executive Director or Commission may deny awarding a prize to a claimant if the ticket is printed or produced in error.
- F. The Executive Director's decisions and judgments in respect to the determination of a winning ticket or any dispute arising from the payment or awarding of prizes are final, subject to an appeal to the Commission.
- G. Unless the rules or procedures for any specific game provide otherwise, SCEL shall have the authority to designate any game be paid in periodic payments. Any prize not designated to be paid in periodic payments by the player or SCEL will be paid in a lump sum less that portion paid to the federal and state government for withholding tax purposes. No schedule of prize payments shall exceed twenty (20) years. To provide periodic prize payments, SCEL may purchase annuities from annuity sellers, securities from the United States government, or any other instruments provided for by law.

44-80. Assigning the right to claim a prize.

- A. No person entitled to a prize may assign the right to claim it, except:
 - (1) That payment of a prize may be made to any legal representative, including, but not limited to, guardians, executors, administrators, receivers, or other court-appointed assignees;
 - (2) For the purpose of paying federal, state or local tax; or to satisfy executions, judgments, or orders or other processes legitimately obtained from federal or state courts; or
 - (3) Transfers of remaining lottery annuity prize payments may be assigned as authorized by the Executive Director.
- B. In the event that there is a dispute or it appears that a dispute may occur relative to any prize, the Commission or Executive Director may refrain from making payment of the prize pending a final determination of the dispute by the Commission or by a court of competent jurisdiction.
- C. A ticket that has been legally issued by a lottery retailer is a bearer instrument until signed. The person who signs the ticket is considered the bearer of the ticket.
- D. All prizes shall be paid within a reasonable time after the claims are verified by the Executive Director and a winner is determined in a manner approved by SCEL. The date of the first installment payment of each prize to be paid in installment payments shall be the date the prize event is validated and certified. Subsequent installment payments shall be made annually from the date of the event in accordance with the type of prize awarded.
- E. The Executive Director may, at any time, delay any payment in order to review a change in circumstance relative to the prize awarded, the payee, the claim, or any other matter that may have come to the Executive Director's attention. All delayed payments shall be brought up-to-date immediately upon the Executive Director's confirmation and continue to be paid on each originally scheduled payment date thereafter. If any prize is payable for the life of the claimant, only an individual may claim that prize, and if the individual is claiming on behalf of a group, a corporation, or the like, the life of the claim shall not exceed twenty (20) years.
- F. All prizes or portions of prizes which remain unpaid at the time of a prize winner's death are payable to the prize winner's estate.
- G. The Executive Director may rely wholly on the presentment of certified copies of a court's appointment of an administrator or executor, guardian, conservator or any other evidence of a person entitled to the payment of any prize winnings then due.
- H. The payment to the estate of a deceased owner of any prize winnings by the Executive Director absolves the Commission, Executive Director and employees of the agency of any further liability for payment of the prize winnings. The Executive Director need not look to pay the prize winnings beyond the estate or appointed representative.
- I. The Commission or Executive Director may petition any court of competent jurisdiction to request a determination of the payee for payment of any prize winnings which are or may become due the estate of a deceased winner or a winner under a disability because of minority, mental deficiency, or physical or mental incapacity.
- J. Whenever the winner of a lottery prize is also a lottery retailer, or is an owner or officer of a partnership or corporation that is a lottery retailer, the Executive Director may offset any debt due SCEL against the amount of the prize due to the winner of the prize.

44-90.10. Financial administration and procedures for collection of the proceeds of lottery games.

184 FINAL REGULATIONS

A. All lottery retailers are required to make weekly payment for sales using the Electronic Funds Transfer (EFT) system through a dedicated bank account. The lottery retailer is required to establish an account for this purpose with a financial institution participating in the Automated Clearing House (ACH) Network. All amounts due must be deposited to the designated bank account in accordance with Section 59-150-190(B). Partial deposits or payments are not permitted and have no effect in reducing the lottery retailer's liability to SCEL.

B. The lottery retailer will receive a weekly notice from SCEL or through such reporting system or equipment as SCEL may designate, indicating the amount due to SCEL from the lottery retailer. Before 2:00 PM on every Wednesday, or should a banking holiday or other bank closing occur on Wednesday, before 2:00 PM on the immediately following Thursday, the retailer must deposit funds, equal to the amount due to SCEL. Funds must be transferred to SCEL from this account each week. If the balance for the preceding week is a credit due, the amount of the credit due must be transferred to the account of the lottery retailer by SCEL in the following week. The Executive Director may revise or amend the times for making deposits required by this item, upon reasonable notice to the lottery retailer, when it is necessary for the efficient operation of SCEL.

C. SCEL shall not sell or deliver any lottery games or other products to the lottery retailer if the lottery retailer is delinquent in any payment.

D. When a lottery retailer indicates an intent to discontinue the sale of lottery products, any amount owed SCEL by the lottery retailer becomes due immediately, and the lottery retailer shall deposit the amount due in accordance with subsection (B) above.

E. SCEL may combine individual debts owed to SCEL by a lottery retailer for the purpose of issuing a combined assessment.

44-90.20. Collection and enforcement of non-sufficient funds, past due accounts, or Delinquent Accounts.

A. SCEL may suspend lottery activity by any lottery retailer by causing any equipment or other property provided or acquired for specific and exclusive use in lottery operations to be mechanically or electronically disabled, or otherwise rendered useless, as well as by other means provided for by law or regulation, and by discontinuing the sale or delivery of any lottery products, or any other service or function, to the lottery retailer.

B. When a lottery retailer fails to deposit funds as required by R.44-90.10(B), and the related EFT transaction is rejected by the lottery retailer's financial institution, the Executive Director shall convey a written warning informing the lottery retailer of the future consequence of such action. The Executive Director shall suspend all lottery activity by the lottery retailer and/or shall assess a fee against the lottery retailer, or any of these, in accordance with the following schedule:

(1) As to the first occurrence within any twelve-month period, the Executive Director shall convey to the lottery retailer a written warning of the future consequence of such action.

(2) As to the second occurrence in any twelve-month period, the Executive Director shall suspend all lottery activity for a period of up to seven (7) days, and shall assess against the lottery retailer a fine of not less than one hundred dollars (\$100) nor more than ten percent (10%) of the average gross proceeds from lottery sales over the last ten (10) weeks for the retail location.

(3) As to the third occurrence in any twelve-month period, the Executive Director shall suspend all lottery activity for a period of up to thirty (30) days, and shall assess against the lottery retailer a fine of not less than three hundred dollars (\$300) nor more than twenty percent (20%) of the average gross proceeds from lottery sales over the last ten (10) weeks for the retail location.

(4) As to the fourth occurrence in any period, the Executive Director shall revoke any license, or other privilege or authority issued to the lottery retailer by the Executive Director, forthwith.

C. The Executive Director may require a lottery retailer to make payment of any past due or delinquent amount by certified check or wire transfer.

D. In determining whether the provisions of the section have been violated, the Executive Director may exercise discretion as he or she deems appropriate so long as the integrity and security of the Lottery is maintained.

E. The SCEL/lottery retailer relationship contemplates that the lottery retailer will establish and maintain an automated clearing house (ACH) account to facilitate the lottery retailer's payments to SCEL. The lottery retailer's depository institution has no liability for the lottery retailer's failure to remit or deposit as instructed by SCEL. SCEL has no requirement to instruct the lottery retailer's depository bank in the specification of service

charges, bank statement production schedules, or any other aspect of the retailer/depository institution relationship.

44-90.30. Financial accounts.

A. Education Lottery Account - The Executive Director shall implement through the State Treasurer's Office an Education Lottery Account in accordance with applicable provisions of state law, and any applicable rules.

B. Prize Disbursement Account - The Executive Director shall establish a Prize Disbursement Account, in a private banking institution, which shall permit the immediate payment of lottery prizes, by check, to the winners.

(1) As nearly as practical, the total expenditures from the Prize Disbursement Account combined with any prizes paid by the lottery retailers, shall be no less than forty-five percent (45%) of gross amount received from the sale of lottery games.

(2) Access to the account for purposes of drawing checks shall be limited to those persons expressly authorized by the Executive Director to operate secure check writing machines and who are provided security keys and computer keys for their operation incident to their official duties.

(3) All checks issued from the Prize Disbursement Account shall prominently display the logo of the Lottery.

(4) Checks in payment of prizes drawn upon the Prize Disbursement Account may be issued under the signature of the Executive Director, his or her designee, or the authorized facsimile of his or her signature.

(5) The agency shall settle lottery retailer accounts no less frequently than weekly, unless the Executive Director specifies a different time.

(6) The Executive Director may make payments from the Prize Disbursement Account to lottery retailers for purposes of refund or credit for unsold tickets, other ticket sales adjustments or instant game account adjustments.

44-90.40. Bonds.

A. The Executive Director may require a bond, securities, or an irrevocable letter of credit from a lottery retailer in an amount determined by the Executive Director consistent with the financial stability of the retailer, to avoid monetary loss to the state because of the activities of a lottery retailer. The bond must be on an approved form through a company authorized to do business in this state and approved by the Executive Director. If securities are deposited or an irrevocable letter of credit filed, the securities or letter of credit must be of a type or in a form approved by the Executive Director.

44-100. Supplying of identifying numbers.

A person required to make a payment, statement, or other document to SCEL shall include in such payment, statement, or other document such identifying numbers as may be prescribed by the Executive Director for securing proper identification of such person.

44-110. Forms.

Lottery retailers shall file with the lottery, or its designated representatives, reports of the lottery retailer's receipts and transactions in the sale of lottery games on a form or in a manner as the Executive Director may require.

44-120. Reports.

The Executive Director may prepare such daily, monthly, and annual reports as may be necessary for the efficient and effective operation of the lottery, including but not limited to, the number of lottery retailers licensed; the number of new licenses applied for; the number of retail licenses suspended, revoked, or canceled; and such other information and reports as the Commission may request. The Executive Director shall provide to the Commission any such reports periodically as may be requested or appropriate to fully inform the Commission regarding licensure activity.

44-130. Use of Lottery trademarks.

A. Lottery retailers may use, and display the Lottery Logo, trademark, and other advertising materials without charge to the user or compensation to SCEL for its use.

B. Any use of the Lottery Logo or other trademarked or copyright materials, other intellectual property, or copy in advertising or production of consumer articles requires a prior written request and execution of the Retailer Contract.

186 FINAL REGULATIONS

C The Executive Director may exercise supervision over the quality of the materials produced under trademark licensing agreement, and may require as a condition to continuation of the license, changes in quality of the goods or material produced.

D The Commission and Executive Director may at any time terminate an agreement to license in the event that the licensee fails to meet the requirement of the agreement, or in the event that the continuation of the license is not considered to be in the best interest of SCEL or of the State of South Carolina.

44-140. Games prohibited.

A. Nothing in these regulations may be construed to allow any lottery or lottery games prohibited by Sections 59-150-20(7), 12-21-2710, 16-19-40 and 16-19-50.

Preliminary Fiscal Impact Statement:

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

Document No. 2710
DEPARTMENT OF NATURAL RESOURCES
CHAPTER 123

Statutory Authority: S.C. Code Sections 50-15-30, 50-15-40 50-15-50 and 50-15-70

123-150. Non-Game and Endangered Species.
123-150.2 Birds, Fish, Reptiles, Amphibians and Mammals.
123-151.1 Spotted Turtle Program

Synopsis:

These regulations amend Sections 123-150 and 123-150.2 in Chapter 123 and create a new Section, 151.1 in this same Chapter.

Section 123-150 addresses two additions to the State List of Endangered Wildlife Species of South Carolina, the piping plover and the gopher frog.

Section 123-150.2 addresses additions and deletions to the official state list of Non-game Wildlife in Need of Management. The piping plover is deleted from the list, being moved to the list of endangered species and the glossy ibis is deleted from the list. The spotted turtle is added to the list.

Section 123-151.1 addresses establishment of a program to manage the take, possession and commercial trade in the spotted turtle.

Instructions:

Replace existing Sections 123-150 and 123-150.2 of Chapter 123 with the following amended Sections and add Section 123-151.1 to Chapter 123.

Text:

Article 5
Non-Game and Endangered Species

Reg.

123-150 Non-Game and Endangered Species.
123-150.2 Birds, Fish, Reptiles, Amphibians and Mammals.

123-151.1 Spotted Turtle Program.

123-150. Non-Game and Endangered Species

1. The following list of species or subspecies of non-game wildlife are faced with extinction in the foreseeable future and are added to the official State List of Endangered Wildlife Species of South Carolina.

I. Birds

1. American Peregrine Falcon (*Falco peregrinus anatum*)
2. Arctic Peregrine Falcon (*Falco peregrinus tundrius*)
3. Bachman's Warbler (*Vermivora bachmanii*)
4. Bewick's Wren (*Thryomanes bewickii*)
5. Eskimo Curlew (*Numenius borealis*)
6. Kirtland's Warbler (*Dendroica kirtlandii*)
7. Red-cockaded Woodpecker (*Picoides borealis*)
8. Swallow-tailed Kite (*Elanoides forficatus*)
9. Wood Stork (*Mycteria americana*)
10. Piping Plover (*Charadrius melodus*)
11. Southern Bald Eagle (*Haliaeetus leucocephalus*)

II. Fish

1. Shortnose Sturgeon (*Acipenser brevirostrum*)
2. Pinewoods Darter (*Etheostoma mariae*)

III. Mammals

1. Atlantic Right Whale (*Eubalaena glacialis*)
2. Blue Whale (*Balaenoptera musculus*)
3. Bowhead Whale (*Balaena mysticetus*)
4. Eastern Cougar (*Felis concolor cougar*)
5. Finback Whale (*Balaenoptera physalus*)
6. Florida Manatee (*Trichechus manatus*)
7. Humpback Whale (*Megaptera novaengliae*)
8. Indiana Bat (*Myotis sodalis*)
9. Sei Whale (*Balaenoptera borealis*)
10. Sperm Whale (*Physeter catodon*)
11. Rafinesque's Big-eared Bat (*Plecotus rafinesquii*)

IV. Reptiles

1. Atlantic Leatherback Turtle (*Dermochelys c. coriacea*)
2. Atlantic Ridley Turtle (*Lepidochelys kempii*)
3. Gopher Tortoise (*Gopherus polyphemus*)
4. Atlantic Hawksbill Sea Turtle (*Eretmochelys imbricata*)
5. Eastern Indigo Snake (*Drymarchon corais couperi*)

V. Amphibians

1. Flatwoods Salamander (*Ambystoma cingulatum*)
2. Zigzag Salamander (*Plethodon dorsalis*)
3. Carolina Gopher Frog (*Rana c. capito*)

188 FINAL REGULATIONS

VI. Molluscs

1. Atlantic Pigtoe Mussel (*Fusconaia masoni*)
2. Brother Spike Mussel (*Elliptio fraterna*)

2. It shall be unlawful for any person to take, possess, transport, export, process, sell, or offer for sale or ship, and for any common carrier knowingly to transport or receive for shipment any species or subspecies of wildlife appearing on the list of "Endangered Wildlife Species of South Carolina", except by permit for scientific and conservation purposes issued by the South Carolina Department of Natural Resources.

Permits for conservation purposes shall be issued only for relocation, if warranted, and the incidental take of Red-cockaded Woodpeckers as part of the statewide Habitat Conservation Plan for Safe Harbor and for other mitigation purposes approved by the U.S. Fish and Wildlife Service.

3. The penalty for the violation of this Rule and Regulation shall be that prescribed by 50-15-80, 1976 S.C. Code of laws.

123-150.2 Birds, Fish, Reptiles, Amphibians and Mammals

The following list of species or subspecies of non-game wildlife are considered to be threatened and are added to the official state list of Non-game Species in Need of Management.

I. Birds

1. Bewick's Wren (*Thryomanes bewickii*)
2. Common Ground Dove (*Columbina passerina*)
3. Least Tern (*Sterna albifrons*)
4. Wilson's Plover (*Charadrius wilsonia*)

II. Fish

1. Carolina Pygmy Sunfish (*Elassoma boehlkei*)
2. Broadtail Madtom (*Noturus* sp.)

III. Reptiles

1. American alligator (*Alligator mississippiensis*)
2. Atlantic Loggerhead Sea Turtle (*Caretta caretta*)
3. Atlantic Green Sea Turtle (*Chelonia mydas*)
4. Coal Skink (*Eumeces anthracinus*)
5. Bog turtle (*Clemmys muhlenbergii*)
6. Spotted Turtle (*Clemmys guttata*)

IV. Amphibians

1. Dwarf Siren (*Pseudobranchius striatus*)
2. Pine Barrens Treefrog (*Hyla andersonii*)

V. Mammals

1. Small-footed Bat (*Myotis leibii*)

123-151.1 Regulations for Spotted Turtle**A. Spotted Turtle Program**

1. It is unlawful for any person to take, possess, transport, import, export, process, sell, offer for sale, ship, or receive for shipment any spotted turtle without a permit from the department.

B. Spotted Turtle Permits

1. The department has the authority to grant or deny spotted turtle permits at no cost. Application must be made to the department for a spotted turtle permit.

2. The permits are valid for the calendar year in which they are issued.

3. The permits must be renewed annually at the discretion of the department.

4. The department may set permit conditions consistent with the protection of spotted turtles. Permit conditions include but are not limited to:

- a. Sale of adult spotted turtles is prohibited
- b. An individual may take and possess no more than nine wild-caught adult spotted turtles.
- c. An individual may sell captive bred spotted turtles under four inches in carapace length for educational purposes.

C. Permit Reporting Requirements

1. Spotted turtle permit holders will report the following information to the department annually:

- a. Number of wild-caught adult spotted turtles in possession (not to exceed 9).
- b. Number of captive-bred spotted turtles in possession.
- c. Number of captive-bred spotted turtles produced during calendar year.
- d. Number of captive-bred, juvenile spotted turtles sold in the calendar year.

D. The penalty for violations of this regulation is prescribed in Section 50-15-80a, Code. Each spotted turtle taken or possessed in violation of these regulations shall constitute a separate offense.

Fiscal Impact Statement:

The proposed new regulation and amendments will not result in any measurable fiscal impact to the State. Only one species proposed for a change of status, the spotted turtle, is of economic importance, and this is minimal through the pet trade industry. The proposed new regulation does allow for the continued sale of the spotted turtle in the pet trade, but under guidelines that will protect this species.

190 FINAL REGULATIONS

CHAPTER 7

Statutory Authority: 1976 Code Section 12-4-320

Regulations

| | |
|------|---|
| 7-2. | Applications. |
| 7-6 | Licensed Premises |
| 7-7 | Maintenance of Records. |
| 7-8 | Inspection of Premises |
| 7-9 | Purchase or Possession by Person Under Twenty-one Years of Age. |
| 7-10 | Retail Liquor Dealers. |
| 7-11 | Measurements. |
| 7-13 | Destruction of Two-ounce Containers |
| 7-14 | Private Functions. |
| 7-16 | Purchase of Minibottles from Retail Liquor Dealers |
| 7-17 | Sale and Consumption at Nonprofit Organizations. |
| 7-19 | Restaurants |
| 7-21 | Application |
| 7-22 | Display of License |
| 7-25 | Inspection of Premises. |
| 7-26 | Violations. |
| 7-27 | Stipulations. |
| 7-31 | Possession or Consumption of Alcoholic Liquors by Person Under Twenty-one Years of Age. |
| 7-33 | Records to be Maintained on Licensed Premises. |
| 7-35 | Transfer of Alcoholic Liquor Between Retail Stores. |
| 7-36 | Purchases by Retail Dealer from Licensed Wholesaler Only; Purchases from Exclusive Use Prohibited |
| 7-41 | Natural Wines Defined |
| 7-42 | Readvertising Not Necessary in Same Fiscal Year. |
| 7-48 | Corporations, Associations, etc. Responsible for all Violations on Premises |
| 7-51 | Inspection, Refusal of. |
| 7-52 | Underage Violations--Multiple Offenses. |
| 7-55 | Measurements from Location to School, Church or Playground. |
| 7-56 | Credit Cards Allowed for the Purchase of Liquor. |
| 7-58 | Storage Areas in Retail Stores |
| 7-60 | Merchandise Other Than for Wines or Alcoholic Liquors Cannot be Advertised or Displayed |
| 7-61 | Time of Sale. |
| 7-62 | Open Containers of Wine as Well as Alcoholic Liquors in Retail Liquor Stores. |
| 7-63 | Dishonored Checks to Wholesalers |
| 7-70 | Person Under 21--Violation to Allow Possession and Consumption of Alcoholic Liquors on Premises. |
| 7-71 | Person Under 21--Violation to Allow Possession and Consumption of Beer or Wine on Premises. |
| 7-72 | Wines Sold by Beer and Wine Wholesalers |
| 7-75 | Offers in Compromise Must be in Writing |
| 7-76 | Clubs, Associations, etc., Responsible for all Violations |
| 7-82 | Inspection of Premises Must be Permitted. |

| | |
|------|---|
| 7-85 | Vending Machines for Beer Prohibited. |
| 7-86 | Delivery or Removal of Beer and Wine During Restrictive Hours Prima Facie Evidence of Sale. |
| 7-88 | Stipulations, Acceptance of. |
| 7-89 | USDA Food Stamps Not Accepted in Payment for Beer or Wine |
| 7-92 | Sales by Retailer to Another Retailer for Resale |
| 7-93 | Beer and Wine Permit and Sale and Consumption License Must be in the Same Name |
| 7-95 | Refund on Permit Applications. |
| 7-99 | Sign Required Under Section 61-9-455; Size and Lettering |

Synopsis:

The South Carolina Department of Revenue is considering amending various alcoholic beverage regulations to change references to the former Alcoholic Beverage Commission to the Department of Revenue or the State Law Enforcement Division and to correct references to various code sections that have been changed due to recodification of the alcoholic beverage laws in Title 61. The department is also proposing to delete some outdated provisions of some regulations and repeal other outdated regulations completely.

Instructions: Repeal Regulations 7-8, 7-25, 7-42, 7-48, 7-51, 7-75, 7-76, 7-82, and amend the following Regulations to read:

Text:

7-2. Applications.

A. Reserved.

B. Filing fees. All applications for a license for the sale and consumption of alcoholic beverages in sealed containers of two (2) ounces or less filed with the South Carolina Department of Revenue must be accompanied by the appropriate filing fee before any application can be processed.

C. Reserved.

D. Reserved.

E. Contents of application. All applications for sale and consumption licenses shall describe with particularity the specific areas within the licensed premises upon which the licensee shall store, sell and serve alcoholic beverages in sealed containers of two (2) ounces or less. This description shall include but not be limited to the building or buildings affected, floors, rooms, patios, and recreation areas where authorization to conduct any of the above mentioned functions is requested.

F. Violation of license. A licensee, who permits or knowingly allows the storage, serving, sale or delivery of alcoholic beverages in sealed containers of two (2) ounces or less in or upon those areas of this licensed establishment which were not specifically designated in the application shall be deemed to have violated said license; provided, however, this regulation shall not be construed to prohibit the delivery of such containers within licensed hotels and motels to rooms which are leased and used primarily for lodging purposes.

G. Permits and licenses must be in same name. Where a person applies for or holds a beer and wine permit or a license for the sale and consumption of alcoholic beverages in sealed containers of two (2) ounces or less, or both, both the permit and the license will be required to be applied for in the same name

192 FINAL REGULATIONS

H. Corporate change of officers. A new license for the sale and consumption of alcoholic beverages in sealed containers of two (2) ounces or less is not necessary, provided no violations are pending, if an officer or manager of the corporation is replaced by a different individual.

I. Reserved.

J. Reserved.

7-6. Licensed Premises.

A. Definitions. As used in Article 5 of Chapter 6 of Title 61 of the 1976 Code: (1) The word "premises" means the physical place at which a licensee is or may be licensed to engage in the sale, serving and storage of alcoholic beverages in sealed containers of two (2) ounces or less; (2) The words "licensed premises" mean any premises for which a license under Article 5 of Chapter 6 of Title 61 of the 1976 Code, is in force and effect.

B. Premises must be separate and distinct. No nonprofit organization shall qualify for a sale and consumption license unless the premises to be licensed are located in a place separate and distinct from the premises of any business operation including establishments licensed to sell alcoholic beverages in sealed containers of two (2) ounces or less. Premises which are "separate and distinct" from such business operations must bear a different address, have a separate entrance and not be connected by common doors or passageways with the business premises.

C. Parking lots. Notwithstanding the provisions of any other section of these regulations, the licensed premises of a business establishment which is bona fide engaged primarily and substantially in the preparation and service of meals and which holds a valid license for the sale and consumption of alcoholic beverages in sealed containers of two (2) ounces or less shall not extend to any portion of the business establishment or the property upon which it is located which is designed as or used for a parking area even though food may be served in such area.

7-7. Maintenance of Records.

Every holder of a valid license issued by the South Carolina Department of Revenue for the sale and consumption of alcoholic beverages in sealed containers of two (2) ounces or less is hereby required to keep and maintain upon the licensed premises records of all of his purchases of alcoholic beverages sold in sealed containers of two (2) ounces or less. Such records shall include the name of the seller and the date and quantity of the purchase. These reports of purchases must be kept for a period of two (2) years and shall at all times be open to the inspection of any authorized representative of the department or the State Law Enforcement Division

7-9. Purchase or Possession by Person Under Twenty-one Years of Age.

A. Purchase or possession of alcoholic beverages. To permit or knowingly allow a person under twenty-one years of age to purchase or possess or consume alcoholic beverages in or upon a licensed establishment which holds a license issued by the South Carolina South Carolina Department of Revenue for the sale and consumption of alcoholic beverages in sealed containers of two (2) ounces or less is prohibited and constitutes a violation against the license. Such violation shall be sufficient cause to suspend or revoke the license by the department.

B. Purchase or possession of beer or wine. To permit or knowingly allow a person under twenty-one years of age to purchase or possess or consume beer or wine in or on a licensed establishment which holds a license or permit issued by the South Carolina department is prohibited and constitutes a violation against the license or permit. Such violation shall be sufficient cause to suspend or revoke the license or permit by the department.

7-10. Retail Liquor Dealers.

Must procure permit. Every holder of a retail liquor license in this State must make application for and procure from the South Carolina Department of Revenue a permit to sell alcoholic beverages in sealed containers of two (2) ounces or less before any such sale is made. This permit will be issued by the department free of charge. Any holder of a retail liquor license will be in violation of Title 61 of the 1976 Code, if such sales are made prior to obtaining this permit from the department.

7-11. Measurements.

With respect to a church or a school, the distance shall be measured from the nearest entrance of the place of business by following the shortest route of ordinary pedestrian or vehicular travel along the public thoroughfare to the nearest point of entrance to the grounds of the church or school, or any building in which religious services or school classes are held, whichever is the closer. The South Carolina Department of Revenue has determined that the grounds in use as part of the church or school is restricted to the grounds immediately surrounding the building or buildings which provide ingress or egress to such building or buildings and does not extend to grounds surrounding the church which may be used for beautification, cemeteries, or any purpose other than such part of the land as is necessary to leave the public thoroughfare and to enter or leave such building or buildings.

Only one entrance to the grounds of a church or school shall be considered, to wit: the entrance to the grounds nearest an entrance to the church or school building.

Where no fence is involved, the nearest entrance to the grounds shall be in a straight line from the public thoroughfare to the nearest door.

The nearest point of the grounds in use as part of a playground shall be limited to the grounds actually in use as a playground and the grounds necessary for ingress or egress to such grounds from the public thoroughfare.

7-13. Destruction of Two-ounce Containers.

All holders of a license authorizing the sale and consumption of alcoholic beverages in sealed containers of two (2) ounces or less are required to destroy, as soon as reasonably possible, (1) all empty or partially empty containers of two (2) ounces or less, (2) all other beverage containers on which the seals have been broken, and (3) the contents of any partially empty alcoholic beverage containers of two (2) ounces or less, any of which shall have accumulated upon the licensed premises either from use or from any other source.

"Destroy", in terms of two (2) ounce containers, is defined as any breaking, crushing or smashing which prevents the possible re-use of these receptacles as containers of alcoholic beverages.

"Destroying", in terms of the remaining contents of partially empty two (2) ounce containers and containers upon which the seal has been broken, is defined as the pouring out of such contents through a sewer, disposal, or similar type system so as to prevent any possible re-use.

"As soon as reasonably possible" is defined as immediately upon use, serving, or consumption of the contents, or as frequently thereafter as the business operation permits, but, in any event, not less than once each business day.

7-14. Private Functions.

A. Lease must be written. When a separate and private area of an establishment is leased by a holder of a sale and consumption license to a specific individual or individuals for a function not open to the general public pursuant to Section 61-6-1620(B), the terms of the lease agreement shall be reduced to writing and a copy of that instrument shall be retained by the licensee upon the licensed premises.

194 FINAL REGULATIONS

B. Purchase, Delivery and Possession of Alcoholic Beverages. When a separate and private area of an establishment is leased by a specific individual or individuals for a function not open to the general public pursuant to Section 61-6-1620(B), the host or sponsor of said function, or the designated agent or representative of said host or sponsor must purchase and deliver to the leased area any alcoholic beverages to be possessed and consumed therein and must remain constantly in actual possession of these beverages until such time as the function is concluded, at which time all alcoholic beverages must be removed from the leased area and taken to a location where they may be legally stored. Nothing contained herein shall prohibit the host or sponsor or his designated agent or representative from having other persons, whether employed by the licensee or employed by the host or his agent or representative, from mixing and serving alcoholic beverages belonging to the host of the party.

C. Termination of Lease. In the event that the area leased pursuant to Section 61-6-1620(B), is located upon the premises of an establishment holding either a sale and consumption license or a retail beer and wine permit, the lease agreement shall automatically terminate at two o'clock in the morning. To permit or knowingly allow the possession and consumption of any alcoholic beverages upon the premises of the establishment after two o'clock in the morning shall constitute a violation against the license or permit. Such violation shall constitute sufficient cause for the South Carolina Department of Revenue to revoke or suspend said license or permit.

7-16. Purchase of Minibottles from Retail Liquor Dealers.

In the event a Sale and Consumption of Alcoholic Liquors licensee pays a retail liquor dealer for purchases of liquor in containers of two ounces or less, or for purchases of wine, by check, said check must be honored by the bank upon its first presentation to the bank for collection. If said check is dishonored by the bank, the sale and consumption license will be subject to suspension or revocation, as a dishonored check by the licensee is a violation against his license.

7-17. Sale and Consumption at Nonprofit Organizations.

A. Every initial and/or renewal application for a Sale and Consumption of Alcoholic Liquors License to a bona fide nonprofit organization shall be an association, organization or a nonprofit corporation organized and existing under the laws of the State of South Carolina and operated solely and exclusively for social, benevolent, patriotic, recreational or fraternal purposes but not for pecuniary gain or profit, no part of the net earnings of which inures to the direct benefit of any member or shareholder, it being the intent of Section 61-6-1600 of the Code that a license shall not be granted to or held by an organization which is, or has been, organized and operated primarily to obtain or hold a license to sell alcoholic beverages, but only to a bona fide nonprofit organization with limited membership to which the sale of alcoholic beverages is incidental to the main purpose of the organization.

B. The bona fide nonprofit organization must have a definite fixed method of electing persons on an individual basis to membership in the organization; such method must be described in the club's bylaws and must bear some reasonable relation to the object and purpose of the organization.

C. It shall be maintained by its bona fide members through the payment of monthly, quarterly or annual fees or dues.

D. The affairs and management of such nonprofit organization shall be conducted by a board of directors, executive committee or similar governing body chosen by the members at a regular meeting held at some periodic interval but at least on an annual basis. Provided, however, that nonprofit organizations operated for the benefit of universities and similar public institutions [IRS Code Section 501 (c) (3)] may be governed by a board or committee notwithstanding this provision as provided in the by-laws of the organization.

E. Upon dissolution, liquidation or final termination of the operations of the organization, its residual assets must not inure to the direct benefit of any member or shareholder but must be turned over to one or more nonprofit

organizations which are organized and operated for charitable purposes or for such other purposes as are authorized under Section 61-6-1600.

F. No member, officer, agent or employee of such nonprofit organization shall be paid, or directly or indirectly receive, in the form of salary or other compensation any of the profit from the sale or distribution of alcoholic beverages beyond the amount of such salary as may be fixed and voted at a regular meeting by the members of the organization or at a regular meeting by the governing body out of the general revenue of the organization, nor shall such salaries or compensation be in excess of reasonable compensation for the services actually performed.

G. Each nonprofit organization shall file with its application for a license the following information:

- (1) A certified copy of its charter, articles of incorporation or constitution;
- (2) A copy of its bylaws;
- (3) A list of its officers and directors showing names, ages, correct mailing addresses and business employment.

H. After receiving a license, each organization shall file the following information with the department:

- (1) Changes in the board of directors, executive committee or similar governing body shall be reported within thirty days of the effective date of such change;
- (2) Changes in the organization's constitution, articles of incorporation, bylaws and membership effected during the preceding twelve (12) months must be filed with each application for license renewal;
- (3) A financial statement and a profit and loss statement for the latest calendar year or fiscal year, as the case may be, must be filed with each application for license renewal;
- (4) A sworn statement by an authorized officer of the organization that it is still being operated on a nonprofit and limited membership basis.

I. Licensees under this section shall maintain the following records on their premises and make them available for inspection by any authorized representative of the department:

- (1) A complete membership record showing the date of application of the proposed member, the date of admission after election, the date initiation fees and dues are paid, the amounts paid and the member's correct mailing address.
- (2) All books and records relating to the financial transactions and activities of the licensee, including an income record, expenditure record and bank account all to be maintained in such form as is established by regulation of the Commission.

J. Only bona fide members and bona fide guests of members of such organizations may consume alcoholic beverages sold in sealed containers of two ounces or less upon the licensed premises.

K. Bona fide guests shall be limited to those who accompany a member onto the premises or for whom the member has made prior arrangements with the management of the organization.

7-19. Restaurants.

A. Any business establishment that applies for or holds a sale and consumption license pursuant to Section 61-6-1610 of the Code and is not engaged in the furnishing of lodging, must:

196 FINAL REGULATIONS

1. Be equipped with a kitchen that is utilized for the cooking, preparation, and serving of meals; and
2. Have readily available to its guests and patrons either "menus" with the listings of the various meals offered for service or a listing of available meals and foods, posted in a conspicuous place readily discernible by the guest or patrons; and
3. Prepare for service to customers hot meals at least once each day the business establishment chooses to be open.
4. If such establishment advertises, a substantial portion of its advertising must be devoted to its food services.

B. The following definitions shall be used in conjunction with Section 61-6-1610 of the Code and this Regulation:

1. "Meal" means an assortment of various prepared foods which shall be available to guests on the licensed premises during the normal "mealtimes" which occur when the licensed business establishment is open to the public. Sandwiches, boiled eggs, sausages and other snacks prepared off the licensed premises but sold thereon, shall not constitute a meal.
2. "Kitchen" means a separate and distinct area of the business establishment that is used solely for the preparation, serving and disposal of solid foods that make up meals. Such area must be adequately equipped for the cooking and serving of solid foods, and the storage of same.
3. "Primarily" means that the serving of meals by a business establishment constitutes a regular and substantial source of business to the licensed establishment and that meals shall be served upon the demand of guests and patrons during the normal "mealtimes" which occur when the licensed business establishment is open to the public and that an adequate supply of food is present on the licensed premises to meet such demand.

7-21. Application.

A. Reserved.

B. Reserved.

C. Sale and Consumption License Required. No application for a food preparation license will be accepted unless the applicant also has a license for the sale and consumption of alcoholic beverages in sealed containers of two (2) ounces or less.

D. Permits and Licenses Must Be in Same Name. When a person applies for a beer and wine permit and/or a sale and consumption permit, and/or a food preparation license, all permits and licenses must be applied for in the same name E. Corporate Change of Officers. A new food preparation license is not necessary, provided no violations are pending, if an officer or manager of the corporation is replaced by a different individual.

7-22. Display of License.

The license required by Section 61-6-700, shall be conspicuously displayed in the area in which the wines, liqueurs, and similar alcoholic beverages are used in the cooking and preparation of foods.

7-26. Violations.

A. Beverages to be Used for Cooking Only. Any liqueurs or similar alcoholic beverages stored on the premises of a licensed establishment for cooking purposes shall be used solely and exclusively in the preparation of food for service to the public.

B. Sale and Consumption Prohibited. No liqueurs or similar alcoholic beverages stored on the premises of a licensed establishment for cooking purposes shall be sold in any quantity as a beverage or consumed as a beverage by the licensee, the management, staff and employees of the licensee, or any other person.

C. Other Alcoholic Beverages Prohibited. No alcoholic beverages in containers of more than two ounces shall be allowed on the premises of the licensed establishment except as provided by law.

D. Revocation. Any violation of these regulations or of any other regulations promulgated under the authority of Section 61-2-60, shall constitute grounds for the revocation of the food preparation license (and of any other license or permit the licensee may hold from the South Carolina Department of Revenue).

7-27. Stipulations.

Any written stipulation and/or agreement which is voluntarily entered into by an applicant for a food preparation license between the applicant and the South Carolina Department of Revenue, if accepted by the department, will be incorporated into the basic requirements for the enjoyment and privilege of obtaining and retaining the license and shall have the same effect as any and all laws and any and all other regulations pertaining to food preparation licenses.

Knowing violation of the terms of the stipulation or agreement shall constitute sufficient grounds to revoke said license.

7-31. Possession or Consumption of Alcoholic Liquors by Person Under Twenty-one Years of Age.

To permit or knowingly allow a person under twenty-one years of age to possess or consume alcoholic liquors in or on a licensed place of business which holds a license or permit issued by the South Carolina Department of Revenue is prohibited and constitutes a violation against the license or permit. Such violation shall be sufficient cause to suspend or revoke the license or permit by the department.

7-33. Records to be Maintained on Licensed Premises.

Every person licensed under the provisions of this Act is hereby required to keep and maintain in his licensed premises adequate records of all business transactions. Such records must be kept for a period of two (2) years and shall at all times be open to the inspection of any authorized representative of the South Carolina Department of Revenue.

7-35. Transfer of Alcoholic Liquor Between Retail Stores.

(A) No alcoholic liquors may be transferred from one retail liquor location to any other retail liquor location without special permission in advance of the South Carolina Department of Revenue, provided, however, that where the same person holds more than one retail liquor license, liquor may be transferred from one of such person's licensed locations to another of that person's licensed locations without prior permission from the department subject to the following conditions:

- (a) The transfer is made by common carrier, or
- (b) A licensed wholesaler's truck, or
- (c) By truck or station wagon owned and operated by the licensee;
- (d) All transfers must be properly documented in the form of an invoice in triplicate, as follows:

198 FINAL REGULATIONS

(1) Showing the number of the store license from which transfer is to be made and the number of the store license to which transfer is to be made, and

(2) The brand, size, and quantity to be transferred,

(3) The date the transfer is to be made.

(B) When the vehicle in which the transfer is to be made is owned and operated by the licensee, the following additional information must be shown:

(1) The vehicle must have been registered and acknowledged previously with the department by license number, make, model, color, and serial number. The invoice must show in addition to the above the exact route to be covered by the truck in making the transfer and the most direct route must be selected;

(2) A copy of the invoice must, prior to the transfer, be mailed to the department. A copy of the invoice must be in the possession of the truck driver until delivery is complete, and then retained by the store to which transfer is made. A third copy of the invoice must be retained by the store from which the transfer is made.

For any violation of the foregoing, The department may either suspend or revoke the retail licenses of the dealers involved or impose monetary penalty upon the holders thereof within the limits prescribed by law.

7-36. Purchases by Retail Dealer from Licensed Wholesaler Only; Purchases for Exclusive Use Prohibited.

No retail liquor dealer shall be permitted to purchase any alcoholic liquors except from a licensed dealer in this State. The purchase, or negotiation for purchase, of alcoholic liquors from without the State by a retail dealer is strictly forbidden. No wholesale liquor dealer shall be permitted to purchase alcoholic liquors for the exclusive use of any retailer.

7-41. Natural Wines Defined.

Natural wines are defined as those wines produced by fermentation without any distilled alcohol being added thereto; provided the alcoholic content thereof shall not exceed fourteen percent (14%) by weight.

7-52. Underage Violations--Multiple Offenses.

Whenever a licensed retail liquor dealer has been found by the South Carolina Department of Revenue to have sold alcoholic liquors to a person under the age of twenty-one years or permitted the sale of alcoholic liquors to a person under the age of twenty-one years four (4) or more times within three (3) years, the retail liquor license shall be suspended or revoked and no monetary penalty will be accepted in lieu of suspension or revocations.

7-55. Measurements from Location to School, Church or Playground.

Section 61-6-120, provide that a retail liquor license or a possession and consumption license may not be granted if the place of business is within three hundred feet of any church, school, or playground situated within a municipality, or within five hundred feet of any church, school, or playground situated outside of a municipality. This Regulation is for the purpose of further clarifying the distance and how it shall be measured.

With respect to a church or a school, the distance shall be measured from the nearest entrance of the place of business by following the shortest route of ordinary pedestrian or vehicular travel along the public thoroughfare to the nearest point of entrance to the grounds of the church or school, or any building in which religious services or school classes are held, whichever is the closer. The South Carolina Department of Revenue has determined that the grounds in use as part of the church or school is restricted to the grounds immediately surrounding the building or buildings which provide ingress or egress to such building or buildings and does not extend to the

grounds surrounding the church which may be used for beautification, cemeteries, or any purpose other than such part of the land as is necessary to leave the public thoroughfare and to enter or leave such building or buildings. Only one entrance to the grounds of a church or school shall be considered, to wit: the entrance to the grounds nearest an entrance to the church or school building. Where no fence is involved, the nearest entrance to the grounds shall be in a straight line from the public thoroughfare to the nearest door. The nearest point of the grounds in use as part of a playground shall be limited to the grounds actually in use as a playground and the grounds necessary for ingress or egress to such grounds from the public thoroughfare.

7-56. Credit Cards Allowed for the Purchase of Liquor.

The use of bank or other credit cards for the purchase of Alcoholic Liquors is approved by the South Carolina Department of Revenue, provided the issuing bank or other organization guarantees payment of the instrument representing a purchase through the credit card plan immediately upon presentation by the merchant. Any card plan which in any way has recourse upon the dealer is not approved.

7-58. Storage Areas in Retail Stores.

Storage areas as provided for by Section 61-6-1510 must have an opening no less than thirty-six (36) inches in width, opening only into the selling area of the licensed place of business. Such opening into the storage area and the selling area may have in the opening a solid glass swinging door with no latch on it so that it can be pushed open from either side and cannot be latched, and this door must be of clear glass that can be seen through at all times and nothing can be placed on it to obstruct the view through the door.

No storage area shall occupy a second floor above or below the selling area except as follows:

A split-level selling and storage area may be used provided the storage area is no more than four (4) feet below the level of the selling area. A mezzanine area may be used provided that said area is enclosed only on three sides and that the fourth side faces into the selling area and is completely open, which opening may have a clear glass door under the specifications outlined in the immediately preceding paragraph of this regulation.

7-60. Merchandise Other Than for Wines or Alcoholic Liquors Cannot be Advertised or Displayed.

It shall be a violation for any licensed retail liquor dealer to display or in any manner advertise any product or merchandise other than wines and alcoholic liquors in or on the licensed premises without obtaining prior approval from the South Carolina Department of Revenue.

7-61. Time of Sale.

To sell, barter, exchange, give, transfer or deliver, offer for sale, barter or exchange or to permit the sale, barter, exchange, gift, transfer or delivery of alcoholic liquors by the licensed retailer on the premises of a licensed retail dealer's establishment before nine o'clock in the morning or after seven o'clock in the afternoon shall constitute a violation against the retail dealer's license. Such violation shall constitute sufficient cause for the South Carolina Department of Revenue to revoke or suspend said license. It is not unlawful for retail liquor dealers to remain open during these restricted hours for legitimate purposes other than sale of merchandise.

7-62. Open Containers of Wine as Well as Alcoholic Liquors in Retail Liquor Stores.

200 FINAL REGULATIONS

The South Carolina Department of Revenue has determined that a violation has occurred against a retail liquor licensee if any wine as well as alcoholic liquors is found in containers in or on the licensed premises with the seal broken thereon and, therefore, will be subject to suspension, revocation or a monetary penalty placed thereon.

7-63. Dishonored Checks to Wholesalers.

As Section 61-6-940 requires the retail liquor license to be revoked when such licensee is indebted to a licensed wholesale liquor dealer, the giving of a check which is dishonored by the bank is in violation of this Section of the Code.

Upon receipt by a wholesaler of such a dishonored check, the wholesaler must notify all the other licensed wholesalers that the particular licensee is in violation of the law, and all licensed wholesalers must put the individual licensee on a cash only basis.

7-70. Person Under 21--Violation to Allow Possession and Consumption of Alcoholic Liquors on Premises.

To permit or knowingly allow a person under twenty-one year of age to purchase or possess or consume alcoholic liquors in or on a licensed place of business which holds a license or permit issued by the South Carolina Department of Revenue is prohibited and constitutes a violation against the license or permit. Such violation shall be sufficient cause to suspend or revoke the license or permit by the department.

7-71. Person Under 21--Violation to Allow Possession and Consumption of Beer or Wine on Premises.

To permit or knowingly allow a person under twenty-one years of age to purchase or possess or consume beer or wine in or on a licensed place of business which holds a permit issued by the South Carolina Department of Revenue is prohibited and constitutes a violation against the license or permit. Such violation shall be sufficient cause to suspend or revoke the license or permit by the department.

7-72. Wines Sold by Beer and Wine Wholesalers.

Under the provisions of Section 61-4-10, wine containing alcohol not exceeding twenty-one percent (21%) by volume has been declared to be non-alcoholic and non-intoxicating.

The sale of such wine may be made by wholesale beer and wine dealers to retail liquor dealers, and wine not exceeding fourteen percent (14%) by volume may be sold to licensed retail beer and wine dealers.

It is a violation against any retail beer and wine permittee to have on the licensed premises any wine that is over fourteen percent (14%) alcohol by volume.

7-85. Vending Machines for Beer Prohibited.

No beer and/or wine may be sold or dispensed through any type of vending machine.

7-86. Delivery or Removal of Beer and Wine During Restrictive Hours Prima Facie Evidence of Sale.

Any beer or wine sold, offered for sale or delivered to anyone from any licensed place of business or the removal therefrom of any beer or wine between the hours of twelve o'clock Saturday night and sunrise Monday morning is a violation against the beer and wine permit and such permit will be subject to suspension or revocation, or the South Carolina Department of Revenue may accept a monetary penalty in lieu of suspension or revocation. Any delivery or removal of beer or wine between these restrictive hours shall be prima facie evidence that a sale was made.

7-88. Stipulations, Acceptance of.

Any stipulation and/or agreement which is voluntarily entered into by an applicant in writing for a beer and wine permit between the applicant and the South Carolina Department of Revenue, if accepted by the department, will be incorporated into the basic requirements for the enjoyment and privilege of obtaining and retaining the beer and wine permit and which shall have the same effect as any and all laws and any and all other regulations pertaining to the effective administration of beer and wine permits and permittees.

In the event that evidence is presented to this department that any part of the stipulation or agreement is or has been knowingly broken by the permittee will be a violation against the permit and shall constitute sufficient grounds to suspend or revoke said beer and wine permit.

7-89. USDA Food Stamps Not Accepted in Payment for Beer or Wine.

No holder of a permit authorizing the retail sale of beer and wine, nor any agent or servant of said permittee, shall accept USDA food coupons (or any other food coupons) in exchange for beer or wine. Any violation of this regulation shall constitute sufficient cause for the South Carolina Department of Revenue to revoke or suspend the permit or to impose a monetary penalty thereon.

7-92. Sales by Retailer to Another Retailer for Resale.

It shall be unlawful for a person who holds a retail beer and wine permit or a retail beer permit to sell to any other holder of a retail beer and wine permit or retail beer permit for the purpose of resale of beer and/or wine.

Every holder of a valid wholesale beer and wine permit shall service every holder of a valid retail beer, or beer and wine permit, with store-door delivery on at least a weekly basis within the territory designated by the producer. The violation of this regulation shall result in the suspension or revocation of the wholesale beer and wine permit, or a monetary penalty in lieu thereof.

7-93. Beer and Wine Permit and Sale and Consumption License Must be in the Same Name.

Where a person applies for or holds a beer and wine permit or a license for the sale and consumption of alcoholic beverages in sealed containers of two ounces or less, or both, both the permit and the license will be required to be applied for in the same name .

7-95. Refund on Permit Applications.

When an application for a beer or beer and wine permit is approved by the South Carolina Department of Revenue and is not used, a request for the refund of the application fee must be received by the department within the fiscal year for which the permit was issued, and in no event will a refund of an application fee be made unless a request is received by the department within sixty (60) days of the date the permit was issued. An Agent of the department or the State Law Enforcement Division must verify in writing that the permit was not used.

7-99. Signs Required Under Section 61-4-70 and 61-6-1530; Size and Lettering.

The lettering on the signs required under Section 61-4-70 and 61-6-1530 shall be no smaller than one-half inch and the sign shall be posted in a conspicuous place behind the bar if the permit is for on-premise consumption or at the check-out counter if the permit is for off-premise consumption. Failure to post this sign in a proper manner shall constitute a violation against the permit.

Fiscal Impact Statement:

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

Document No. 2662
DEPARTMENT OF REVENUE
 CHAPTER 117
 Statutory Authority: 1976 Code Section 12-4-320

Regulations:

| | |
|--|--|
| ADMINISTRATIVE REGULATIONS | |
| 117-1 | Supplying of Identifying Numbers |
| 117-2 | Retention of Books and Records and the Use of Microfilm Reproduction of Books and Records |
| | |
| ALCOHOLIC LIQUOR, BEER AND WINE AND LICENSE TAX REGULATIONS | |
| 117-12 | Collection and Payment of Tax and the Maintaining of Records |
| 117-20 | Sales or Exchanges with other Wholesalers |
| 117-21 | Change in Distributors |
| 117-38 | Soft Drinks - Exemptions |
| 117-49 | Classification of Industrial Customers |
| | |
| INCOME TAX REGULATIONS | |
| 117-61 | Tax Liability of Stockholders |
| 117-73 | Related Expenses Defined |
| 117-74 | Allocation of Out-of-State Income and Losses |
| 117-81 | Tax Credit to Residents of this State Upon Income from a Partnership Taxed in Another State |
| 117-83 | Copies of Withholding Statements |
| 117-87.17 | Unrelated Business |
| 117-87.20 | Information Reports |
| 117-87.32 | Active Duty Military Pay |
| 117-88.1 | Determining Net Income of Building and Loan Associations |
| 117-88.2 | Earnings Paid to Shareholders |
| 117-89.1 | Annual Reports of Public Utilities |
| 117-91.1 | Nonresident Employees Operating Common Carriers |
| 117-91.7 | The One-half Rule |
| 117-92.1 | Entire Net Income |
| 117-92.3 | Federal Income Tax Deduction |
| | |
| PROPERTY TAX REGULATIONS | |
| 117-115 | General Requirements for Ratio Study |
| 117-116 | Form to Provide Tax Commission with Information for Ratio Studies |
| 117-124.2 | Licensed Automotive Vehicles and Airplanes |
| 117-124.3 | Manufacturing Plants Constructed Pursuant to the Industrial Revenue Bond Act |
| 117-126 | Use Value Procedure for Cropland and Timberland |

| | |
|---------|---|
| 117-127 | Computation of Index of Taxpaying Ability for School District |
|---------|---|

Synopsis:

The South Carolina Department of Revenue is considering amending various administrative, license tax, income tax, and property tax regulations to change references to the former tax commission to the Department of Revenue and to correct references to various code sections that have been changed due to recodification of administrative and income tax laws in Title 12.

Instructions: Amend the following Regulations to read:

204 FINAL REGULATIONS

Text:

ADMINISTRATIVE REGULATIONS

117-1. Supplying of Identifying Numbers.

Any person required to make a return, statement, or document to the South Carolina Department of Revenue shall include in such return, statement, or other document such identifying numbers as may be prescribed for securing proper identification of such person.

117-2. Retention of Books and Records and the Use of Microfilm Reproduction of Books and Records.

For the purpose of the administration of taxes and licenses imposed under the provisions of Title 12, every person liable for taxation is required to keep such permanent books of account or records including inventories, as are sufficient to establish the amount of gross income, the deductions, required to be shown on any return and such other matters as are required to be shown on any return required.

Such books or records are required to be kept at all times available for inspection by agents or auditors of the South Carolina Department of Revenue, and shall be retained for at least four years after the return was filed or due to be filed, whichever is later.

ALCOHOLIC LIQUOR, BEER AND WINE AND LICENSE TAX REGULATIONS

117-12. Collection and Payment of Tax and the Maintaining of Records.

The General Assembly in Section 12-33-250, provided for the collection and payment of the license taxes levied by Sections 12-33-230 and 12-33-240 in the same manner and under the same conditions as the taxes imposed by Sections 12-33-410 and 12-33-460. The payment of taxes levied by Sections 12-33-410 and 12-33-460 is provided for by Section 12-33-480 and requires the same on or before the twentieth day of the month next succeeding the month in which the tax accrues. A report is required on or before the twentieth of each month on forms prescribed by the South Carolina Department of Revenue stating the number of cases of alcoholic liquors sold during the preceding month.

The licensed wholesaler must maintain adequate and complete records. Such records shall be available for examination and review by the department.

117-20. Sales or Exchanges with other Wholesalers.

Each wholesale beer and wine dealer shall report all sales purchases or exchanges of their products with other wholesale dealers to the South Carolina Department of Revenue on such forms as may be prescribed by the department. Such information must be reported to the department along with the wholesale dealer's monthly report not later than the 20th day of the month following the month in which the sale purchase or exchange occurred. Failure to timely report such information in full as provided herein for any reason shall constitute a violation of this Regulation for which the department may suspend or revoke all permits held by such dealer or impose a monetary penalty of not less than \$20.00 nor more than \$100.00 upon the holder thereof.

117-21. Change in Distributors.

It has been called to the attention of the South Carolina Tax Department of Revenue by certain members of the General Assembly, who have filed statements thereabout with the said department, that it was not the intention of the South Carolina General Assembly in enacting Section 12-21-1330 of the 1976 Code to require the filing of the ninety day written notice with the department by manufacturers and wholesalers prior to any change in their distributors, or in the territories of their distributors, where both the manufacturer and the wholesaler mutually agree in writing to waive the said ninety day written notice requirement.

Based upon the aforementioned declaration of legislative intent pertaining to the enactment of Section 12-21-1330, the South Carolina Department of Revenue, in instances where both the manufacturer affected and the wholesaler affected mutually agree in writing to waive the aforesaid ninety day notice prior to change in their distributors or in the territory of their distributors, will consider the filing of the waiver agreement with the department sufficient compliance with the provisions of said Section 12-21-1330.

Until the mutually executed waiver agreement is duly filed with the department, and in form and content acceptable to the department, the waiver of the notice requirements of Section 12-21-1330 shall not become effective.

117-38. Soft Drinks--Exemptions.

Any "bottled soft drink" for which exemption is claimed under Section 12-21-1880 of the 1976 South Carolina Code of Laws must be registered with the South Carolina Department of Revenue. No such drinks shall be entitled to the exemption until such registration shall have been accomplished as prescribed herein. Registration shall be accomplished by the filing of an affidavit of exemption by the bottler on forms to be prescribed by the department. In addition to the affidavit to be filed by the bottler, such bottler shall obtain and file simultaneously an affidavit from his franchising manufacturer on forms to be prescribed by the department.

As a further requirement to qualify for the exemption the "bottled soft drink" lid or crown, or in the instance of bottled soft drinks offered for sale in sealed cartons or containers, must have the name and address of the bottler clearly indicated thereon.

All "bottled soft drinks", which are not registered and for which the required affidavits of exemption are not on file, and which do not show the name and address of the bottler in the manner prescribed herein, or which do not have affixed thereto the required revenue stamps, lids, or crowns, shall be subject to confiscation.

117-49. Classification of Industrial Customers.

Hereafter, the South Carolina Department of Revenue will use Division (D), Manufacturing, Standard Industrial Classification Manual, Bureau of the Budget, 1967, as a guide to classify "industrial customers", as such term is used in Section 12-23-10 of the 1976 Code.

Persons engaged in the business of manufacturing, generating and selling electric power must furnish to the department a list, on or before January 31 and July 31 of each year, of industrial customers for which an exemption is claimed for the preceding periods, June through December and January through June, respectively. Such lists must show the name, address, KWH consumption and the standard two-digit classification code as provided in the Standard Industrial Classification Manual.

206 FINAL REGULATIONS

INCOME TAX REGULATION

117-61. Tax Liability of Stockholders.

When a business continues operating, after cancellation of the corporation charter as a result of non-payment of license fee, the stockholders are required to file a Partnership Return, and each stockholder/partner is liable for income tax on his individual share of the profits, as provided in Section 12-6-510.

117-73. Related Expenses Defined.

The term “related expenses” as used in Section 12-6-2220 shall mean any cost incurred, directly or indirectly, in connection with investments for the production of income or future income which is or will be specifically and directly allocable under this section or costs incurred in the acquisition, sale or exchange of real, tangible or intangible property.

117-74. Allocation of Out-of-State Income and Losses.

Income or loss realized by resident individuals or partnerships from an established business, or from the lease or rental of tangible personal property or real property, the situs of which is in another state, shall be allocated to the state in which the business or property is located. Except, income of a resident individual or partnership, derived from personal services, shall be allocated to this State as provided in Section 12-6-2220(6).

However, in the case of a resident individual or partnership, conducting a business of a unitary or homogenous nature, partly within and partly without this State, such income or loss shall be apportioned in accordance with the provisions of Sections 12-6-2250 through 12-6-3360.

117-81. Tax Credit to Residents of this State Upon Income from a Partnership Taxed in Another State.

Where an individual resident of this State is a partner of a partnership rendering personal services in South Carolina and another State, the distributive share of the partnership income received by the resident partner is taxable in this State and he will be allowed the tax credit provided in Section 12-6-3400.

117-83. Copies of Withholding Statements.

The copy of the withholding statement furnished to the employee by the employer, as required under Section 12-8-1540, designated for attachment to the employee’s income tax return, must be attached to the income tax return of the employee. Failure to comply may result in the non-issuance of a refund.

117-87.17. Unrelated Business.

The phrase “transacting or conducting his business partly within and partly without this State” as used in Section 12-6-2210, is applicable to a single business operation, which is unitary or homogenous and is carried on both within and without the State. A taxpayer operating two or more unrelated businesses, each of which is entirely within and without the State, shall not be subject to the provisions of this section, but shall determine the South Carolina net income on the basis of separate accounting. A taxpayer operating a unitary or homogenous business within and without the State and an unrelated business either entirely within or without shall be subject to the allocation formulas with respect to the unitary or homogenous business but not with respect to the unrelated

business. The income from the unrelated business shall be directly assignable to the State where such business is conducted.

117-87.20. Information Reports.

Information reports required under Section 12-6-4950, shall not apply to payments made to banks or to any organization exempt from South Carolina income tax, under Section 12-6-550.

117-87.32. Active Duty Military Pay

1. Military pay in general: Under the provisions of Sections 12-6-510, 12-6-560, and 12-6-570, military pay is reportable for South Carolina income tax purposes.

2. Nonresident armed services personnel: Under the Soldiers' and Sailors' Civil Relief Act, members of the armed services, who are legal residents of other states stationed within South Carolina by virtue of military orders, are not subject to South Carolina income tax on their service pay. They are, however, subject to tax on any other income earned in South Carolina which would be taxable to a nonresident. Income earned in South Carolina by wives of servicemen is taxable to South Carolina.

The personal exemptions and deductions of a nonresident serviceman's wife must be prorated in ratio to her adjusted gross income within this State to her entire adjusted gross income wherever earned. She would not be entitled to claim exemptions for dependents unless she could prove that she furnishes more than fifty percent of their support for the entire year.

There is nothing in the Soldiers' and Sailors' Civil Relief Act or in the South Carolina statutes which would prevent a serviceman from changing his legal residence. To effect a change of legal residence, however, there must not only be an intention of making the new location the domicile of the serviceman, but also there must be the factual establishment of a domicile in the new location.

The establishment of a permanent residence (or domicile) in a new state ordinarily requires physical presence of the person in the state long enough to establish evidence of having taken up residence in the state. Some of the tests or factors to consider in determining such permanent residence (or domicile) include the following:

- (a) Place of birth.
- (b) Permanent residence of father.
- (c) Family connections, close friends.
- (d) Address given for military purposes.
- (e) Payment of state bonus (in most cases when a state pays a bonus to a serviceman, the serviceman must be a permanent resident to be eligible).
- (f) Civic ties, church membership, club or lodge membership.
- (g) Bank account or business connections.
- (h) Payment of state income taxes.
- (i) Continuous car registration and driver's license.
- (j) Listing of "legal" or "permanent" address on Federal tax returns.
- (k) Voting by absentee ballot.
- (l) Occasional visits or spending one's leave "at home."
- (m) Ownership of a home.
- (n) Execution of approved certificates or other statements indicating permanent residence.
- (o) Expression of intention.

Our administrative policy is in accord with the military services and the courts, including Federal courts, which, when arbitrating disputes over residency, have consistently held that a legal residence (or domicile) is not abandoned until a definite residence is established elsewhere.

208 FINAL REGULATIONS

3. Resident armed services personnel: For the purpose of reporting military income to South Carolina, the word "resident" means an individual who is a legal resident of this State, whether stationed in this State or in some other State or country. Unless he submits evidence that he has established legal residence in another State or territory and abandoned any domicile in this State, an individual will be presumed to be a resident of South Carolina if he entered military service while a resident of this State. As a resident, such individual will be required to report income from all sources to South Carolina.

The following may be used as a guide to determine the income tax liability of those servicemen determined to be South Carolina residents:

(a) Taxable service income: Taxable service income includes base pay, longevity pay, flight pay, foreign service pay, submarine pay, jump pay, and re-enlistment pay bonus.

(b) Exempt service income: Income not taxable to servicemen includes enlisted men's subsistence and quarters allowances, officers' subsistence and quarters allowances, family allowances under Servicemen's Dependency Allowance Act.

(c) Allowable deductions: Deductions may be claimed by servicemen for insignia, swords, excessive cost of caps (for naval commanders, army and air force colonels, and officers of higher rank), and cost of altering uniforms necessitated by change in rank. (The expenses for which a deduction is allowed are only those expenses actually paid for which no reimbursement is received. The cost of uniforms and cleaning of same is not allowed to members of the armed forces on full-time duty on the basis that the uniform replaces ordinary street clothes and as such is a personal expense.)

(d) Non-deductible items: In the case of individuals on full-time duty, no deduction is allowed for such items as uniforms, fatigues, laundering or cleaning, ordinary tailoring of uniforms.

117-88.1. Determining Net Income of Building and Loan Associations.

In accordance with Section 12-13-30 any additions to reserves which are required by law, regulation or direction of appropriate supervisory agency must be allowed as a deduction in determining net income but the burden is upon the savings and loan association and/or building and loan association to show what the regulatory agency required.

117-88.2 Earnings Paid to Shareholders

For the purposes of Section 12-13-20, a deduction shall be allowed for earnings paid to shareholders in an amount equal to the earnings actually paid out and/or credited to each shareholder's account. Earnings credited to a reserve account for future payments shall not qualify for this deduction.

117-89.1. Annual Report of Public Utilities.

Gross receipts, as used in Section 12-20-100, shall include all receipts from operations within the State, and also other profit and loss items with a local situs. Intangible income from intangibles used in the conduct of the business within this State shall be included in gross receipts.

117-91.1. Nonresident Employees Operating Common Carriers.

Nonresident employees engaged in the actual operation of common carriers moving from a point without South Carolina into or through the State and return, shall not be deemed to have earned an income within the meaning of Chapter 6, with respect to their compensation for personal services upon such common carriers.

117-91.7. The One-half Rule.

A particular employee may receive wages subject to withholding and also remuneration that is exempt from withholding. In such a case all remuneration paid during the payroll period is treated alike; that is, it is all treated

as wages on which withholding is required, or it is all treated as exempt from withholding. The following rules apply:

(1) If one-half or more of any payroll period (not in excess of 31 days) is spent in earning wages subject to withholding, then withholding is required on all remuneration paid to the employee (including the "exempt" remuneration).

(2) If more than one-half of any payroll period (not in excess of 31 days) is spent in earning exempt remuneration described in Section 12-8-520, then no withholding is required on any wages paid to the employee.

117-92.1. Entire Net Income.

The term "entire net income" as used in Section 12-11-20 shall include income derived from any source whatsoever including interest on obligations of the United States, the United States Government or its possessions or of any state and any political subdivision thereof.

117-92.3. Federal Income Tax Deduction.

Banks reporting on a cash basis may deduct Federal income estimated tax payments in the year in which they are paid.

Cash basis banks using a method other than above may convert by using ten year conversion period as permitted under Regulation 117-92.2.

PROPERTY TAX REGULATIONS

117-115 General Requirements for Ratio Study.

SECTION 1. General Requirements. In accordance with Act 208, the South Carolina Department of Revenue shall annually make a ratio study of all the counties in the state to determine if the level of appraisal and/or assessment and the degree of equity has been achieved as required by law. This information shall be obtained initially from the assessor and field checked when necessary by personnel from the department. The sales that best reflect market value sales will be used to make an analysis to determine the level of appraisal and/or assessment and the degree of equity. If a county has a median appraisal level for all property as a whole or any class higher than 105 percent or lower than 80 percent of fair market value, it shall be deemed unacceptable by the department. If the index of inequality reaches a rating of higher than 15 percent for the county as a whole or any class of property, it shall be deemed unacceptable by the department. However, in the classification of agricultural when there is an insufficient number of market sales to determine the level of appraisal or the index of inequality, the department shall make a determination as to whether or not reassessment is required.

SECTION 2. Average Appraisal. The median shall be the criteria to determine the level of appraisal or assessment for all property as a whole or for any class.

SECTION 3. Index of Appraisal or Assessment Inequality. The index of inequality is defined as: one half the difference between the ratio of the third and first quartile values over the median ratio.

$$\frac{1}{2}(Q3 - Q1)$$

=

Median

The answer when computed is registered as a percent. Whenever this formula is used on all property as a whole or any class with a rating above 15 percent, it shall be deemed unacceptable by the department.

210 FINAL REGULATIONS

SECTION 4. Appraisals in Lieu of Sales. Whenever a county lacks sufficient market value sales to make an accurate ratio study for the county as a whole or any class, the department shall make appraisals of real property which shall be used in lieu of sales in ascertaining level of assessment and the degree of equity.

SECTION 5. Valuation of Agricultural Property Based on Use. The department shall make studies to determine if agricultural real property is being appraised based on use as prescribed by law. The department shall make necessary studies to estimate what the market value of agricultural real property is when the highest and best use is for agricultural purposes.

SECTION 6. Counties' Failure to Meet the Requirements of the Law. Ratio studies will be made from market value sales taking place from Jan. 1 through Dec. 31 of each year and the county shall be notified of the findings of the ratio study on or before June 1.

When a county fails to meet the standards herein prescribed, the department shall notify the county assessor and governing body by June 1 that the county fails to meet the standards and that a reassessment program must be immediately initiated which must be completed within two years from the date of the notice or unless a one-year extension is granted within the two-year period because of extreme circumstances. All corrections in market sales reported for the preceding calendar year must be made to the department on or before March 21 of the year in which the reassessment program is to be implemented.

A failure to implement an acceptable reassessment program by June 1 of the year in which implementation of the program is required will mandate an order to the county auditor to abate or reduce the assessed value of all other classes of property at the level of assessment of the real property included in the program.

117-116 Form to Provide Department of Revenue with Information for Ratio Studies

Under the authority provided for in Section 12-4-550(1) of the 1976 Code, all counties shall furnish to the South Carolina Department of Revenue the information provided for on forms furnished by the department except for transfers which involve a true consideration of less than \$100 and sales of properties that the sale price does not include the same land area and improvements as shown on the assessment roll or appraisal record. This information shall be forwarded to the department within 45 days after the deed has been recorded commencing with all deeds recorded after Dec. 31, 1975.

Effective Jan. 1, 1988, the information furnished shall be on forms provided by the department or in an electronic form such as a computer tape that is approved by the department. The county assessor shall furnish the information for all real property transfers except transfers which are by death or time share properties. The information shall be furnished to the department on a monthly basis by the last day of the following month. However, if the information is furnished to the department in electronic form such as a computer tape that is approved by the department it shall be furnished to the department for each calendar year on or before the following Jan. 31 next succeeding. If the county wishes to furnish this information more frequently, they may do so. The following information shall be furnished by the assessor to the department when available.

- 1.County
- 2.Deed book and page
- 3.Seller, Mailing Address and Social Security or Federal Identification Number
- 4.Purchaser and mailing address
- 5.Date of sale
- 6.Tax district and school district
- 7.Total consideration - sale price
- 8.Number of acres
- 9.Number of lots
- 10.Improved or unimproved

11. Tax map number
12. Major legal classification at time of transfer (residential, agricultural, all other, department jurisdiction, manufacturing or utility, government or exempt)
13. Appraised value (market value) - land, improvements, total-condominiums and property with common areas, only the total is required.
14. Appraised use value (if applicable)
15. Appraisal district (optional)
16. Sub-classification (optional)
17. If it split off another parcel
18. Indicate if new owner might qualify to be exempt
19. Indicate if the sale is a true sale (market value). If no, why?

The assessor will indicate one of the following reasons:

- a. What sold does not match the appraisal record
- b. Family sale
- c. Gift
- d. Personal or other property included
- e. Mortgage assumption cannot be determined
- f. Foreclosure sale
- g. Partial interest
- h. Contract sale or bond for sale (if old)
- i. Other (with explanation)

117-124.2 Licensed Automotive Vehicles and Airplanes.

The return of property to the South Carolina Department of Revenue for property assessment purposes shall not include licensed automotive vehicles or airplanes. Such licensed automotive vehicles and airplanes shall be returned to local county authorities for property assessment purposes.

For the purpose of this regulation, "licensed automotive vehicles" means vehicles that are licensed by the South Carolina Department of Public Safety as provided by law.

117-124.3 Manufacturing Plants Constructed Pursuant to the Industrial Revenue Bond Act.

The lessee of all manufacturing plants constructed pursuant to the Industrial Revenue Bond Act, Act No. 103, 55, Statutes at Large, 120, shall file a return with the South Carolina Department of Revenue in the same manner as if owned by the lessee. The department shall value and calculate an assessment for the manufacturing plant in the same manner as if owned by the lessee and furnish the assessment to the county in which it is located as information so that the county, school districts and other political units may determine such rental charge as required by law which would be equivalent to the ad valorem tax that would result if such property were privately owned.

117-126 Use Value Procedure for Cropland and Timberland.

Act 618 of 1976, provides that implementation of the use value procedures for timberland and cropland, as provided in Section 12-43-220 of the 1976 Code, as amended, shall be the responsibility of the South Carolina Department of Revenue. Under this authority, the department declares the use of its Use Value Manual to be mandatory with respect to its use by county assessors for assessment of cropland and timberland. The manual must be used exactly as furnished, except as provided in this regulation.

The following schedules of values for cropland and timberlands, and the Interim Use Value Procedure are made a part of this regulation.

212 FINAL REGULATIONS

CROPLAND

Cropland has been separated into seven production classes. Section 12-43-220(d) of the 1976 Code, as amended, provides for the valuation of cropland at its fair market value for such agricultural use by the capitalization of typical net income. The procedure used to capitalize typical net income is as follows:

(1) Cropland is valued based on production levels for the different soil types using corn and soybeans as the only crops. The levels of production for classes one through five were obtained from the Soil Conservation Service Publication, National Cooperative Soil Survey, adjusted for typical yields, as required by Section 12-43-220(d) of the 1976 Code, as amended.

The following yields are established as representing typical production levels:

| | |
|---------|--|
| Class 1 | 36 Bushels Soybeans 88 Bushels Corn |
| Class 2 | 32 Bushels Soybeans 80 Bushels Corn |
| Class 3 | 28 Bushels Soybeans 72 Bushels Corn |
| Class 4 | 26 Bushels Soybeans 68 Bushels Corn |
| Class 5 | 24 Bushels Soybeans 64 Bushels Corn |

Class 6 Insufficient Returns

Class 7 Saltwater Marsh

(2) The price per bushel of corn and soybeans was obtained from the South Carolina Crop and Livestock Reporting Service for the years 1976, 1977 and 1978.

(3) The production levels multiplied by the prices per bushel resulted in the average gross income for corn and soybeans for an acre of cropland.

(4) Expenses were then subtracted from the gross income to arrive at net income. The various expenses are as follows:

(a) Variable costs were obtained from Clemson University. These are general farming expenses and fertilizer.

(b) Fixed costs of the farm operation were also obtained from Clemson University.

(c) An overhead charge was used based on 8 % of the variable cost listed in (a). This percentage was based on a study made by Clemson University.

(d) A management cost was used based on 10 percent of the variable, fixed and overhead cost as outlined in (a), (b) and (c) above. This percentage was derived from the 1979 publication Cost of Producing Selected Crops.

These four expense categories were deducted from gross income to arrive at net income.

(5) The last step in the procedure is to capitalize net income into value by use of a capitalization rate which is composed of the following:

(a) An interest rate which is the average coupon rate of all bonds which the Federal Land Bank of Columbia has outstanding for the crop years used in obtaining prices. (See (2) above.) This component is defined in Section 12-43-220(d).

(b) A local property tax component was derived by using the average millage rate for the crop years used (see (2) above) multiplied by the assessment ratio.

(c) A risk component of 15 percent was used which is equivalent to a complete crop loss every 6 2/3 years.

(d) An illiquidity component of .3 percent was used and was recommended by Clemson University.

The capitalization rate is determined by adding items (a), (b) and (d) and by application of the risk component in (c).

In order to reflect market value, the variable factors for prices (item (2)), expenses shown in item (4) (a) and (b), and factors of the capitalization rate shown in item (5) (a) and (b) shall be adjusted as often as the department deems necessary, but no less than every three years. When it is necessary to adjust these factors, the department shall adjust the values set forth in Schedule 1, accordingly.

No other factors listed above may be adjusted without an amendment to the regulation.

A listing of the soil types with the appropriate class designated is shown in the attached appendix. The following schedule includes a low value, the average and a high value for each class. The average must be used except when written justification for a different value is made on the property record card or the appraisal card. In no event, however, may the value be less than the low value nor above the high value. Variables, including field size, ingress and egress and locations would be among the factors which may contribute to a situation requiring an adjustment to the average.

214 FINAL REGULATIONS

SCHEDULE 1

CROPLAND VALUE PER ACRE

| SOIL CLASS | VALUE RANGE AVERAGE | | |
|------------|---------------------|---------|------|
| | Low | Average | High |
| 1 | 410 | 445 | 475 |
| 2 | 275 | 300 | 320 |
| 3 | 175 | 190 | 210 |
| 4 | 120 | 130 | 140 |
| 5 | 60 | 70 | 80 |
| 6 | 40 | 50 | 60 |
| 7 | 10 | | |

Timberland has been separated into seven (7) production classes in each of four provinces, as outlined in the map which follows Schedule 2. The counties within each province shall be shown in the manual. The classes were determined by the site index for various soils as published by the Soil Conservation Service in the National Cooperative Soil Survey.

Section 12-43-220(d) of the 1976 Code, as amended, provides for the valuation of timberland at its fair market value for such agricultural use by the capitalization of typical net income. The procedure used to capitalize typical net income is as follows:

(1) Timberland is valued based on the potential yield of the timberland site measured by the capability of the soils to produce timber with good management.

The following yields are established as representing typical production levels:

| | <u>Site Index</u> | <u>Cords Per Acre</u> |
|---------|-------------------------------|-----------------------|
| Class 1 | 96+ | 1.7 |
| Class 2 | 86-95 | 1.5 |
| Class 3 | 76-85 | 1.2 |
| Class 4 | 66-75 | 1.0 |
| Class 5 | 51-65 | .8 |
| Class 6 | Partially Suitable for Timber | |
| Class 7 | Saltwater Marsh | |

- (2) The weighted price per cord was obtained from Volumes and Stumpage Values of Forest Products by Counties for 1976, 1977 and 1978.
- (3) The production levels multiplied by the weighted price per cord resulted in the average gross income per acre of timberland.
- (4) The only expense which was used to determine net income was the management cost per acre. A cost of \$2.75 per acre was used.
- (5) The last step in the procedure is to capitalize net income into value by use of a capitalization rate which is composed of the following:
- (a) An interest rate which is the average coupon rate of all bonds which the Federal Land Bank of Columbia has outstanding for the crop years used in obtaining prices. (See (2) above.) This component is defined in Section 12-43-220(d).
- (b) A local property tax component was derived by using the average millage rate for the crop years used (See (2) above) multiplied by the assessment ratio.
- (c) A risk component of 6 2/3 percent was used which is equivalent to a loss every 15 years.
- (d) An illiquidity component of .3 percent was used and was recommended by Clemson University.

The capitalization rate is determined by adding items (a), (b) and (d) and by application of the risk component in (c).

In order to reflect market value, the variable factors for prices (item (2)); expense (item (4)), and factors of the capitalization rate shown in item (5)(a) & (b) shall be adjusted as often as the department deems necessary, but no less than every three years. When it is necessary to adjust these factors, the department shall adjust the values set forth in Schedule 2, accordingly. No other factors listed above may be adjusted without an amendment to the regulation. The manual will contain details of the methodology for arriving at the final values. A listing of the soil types with the appropriate class designated is shown in the attached appendix. The following schedule includes a low value, the average and a high value for each class. The average must be used except when written justification for a different value is made on the property record card or the appraisal card. In no event, however, may the value be less than the low value nor above the high value. Variables, including field size, ingress and egress and location, would be among the factors which may contribute to a situation requiring an adjustment to the average.

117-127 Computation of Index of Taxpaying Ability for School District.

Section 59-20-20 of the 1976 Code as amended, requires the South Carolina Department of Revenue to compute the index of taxpaying ability for each school district in South Carolina. The index is to be furnished the Department of Education on or before Feb. 1 of each year. When the index is computed, a number of properties may be under appeal both on the county and state level that effects a school district's index.

Because property under appeal is not legally a part of the tax base, the department must not consider the appraisal or assessment of property under appeal when computing the index. The uncontested amount of the valuation or assessment will, however, be considered when the property owner agrees to pay the tax due on the uncontested amount.

When the assessment is finally determined, any difference between the final assessment and the uncontested assessment shall be added to the current years tax duplicate for each taxable year involved. The difference shall be included in the current years property values for purposes of calculating the index for that year.

216 FINAL REGULATIONS

The Department of Revenue shall maintain the necessary records for property under appeal where the assessment was made in the first instance by the department. The county assessor shall maintain the necessary records regarding other property under appeal. The assessor shall also notify the department of the value of the property currently under appeal, the value of that resolved, and of any additional assessment. The assessor shall furnish this information to the department on or before Dec. 31 of the tax year in question.

Fiscal Impact Statement:

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

Document No. 2695
DEPARTMENT OF REVENUE
CHAPTER 7
Statutory Authority: 1976 Code Section 12-4-320

| Regulation | Regulation Title |
|-------------------|---|
| 7-4 | Reconsideration of Applications |
| 7-19.1 | Rehearings, Location of. |
| 7-30 | Rehearing, Request for--Location. |
| 7-45 | Offers in Compromise Must be in Writing. |
| 7-57 | No Reconsideration on an Application Within Two Years Previously Denied as to Person. |
| 7-87 | Hearing, After Denial. |
| 7-96 | Rehearings, Location of. |

Synopsis:

The South Carolina Department of Revenue is considering repealing various alcoholic beverage regulations since they are no longer needed due to changes in the law.

Instructions: Repeal Regulations

Text:

No text is necessary since the proposal is only repealing regulations no longer needed due to changes in the law.

Fiscal Impact Statement: No Impact

Document No. 2651
DEPARTMENT OF REVENUE
CHAPTER 7
Statutory Authority: 1976 Code Section 12-4-320

Regulations

- | | |
|------|--|
| 7-34 | Advertisements, Retail and Wholesale |
| 7-49 | Revolving Lights, etc., Advertising Merchandise, etc. Prohibited; Window Displays Restricted |

Synopsis:

The South Carolina Department of Revenue is proposing repealing SC Regulations 7-34 and 7-49 concerning alcoholic liquor advertising by wholesalers and retailers since the U.S. Supreme Court, in 44 Liquormart v. Rhode Island, 517 U.S. 484 (1996), held unconstitutional a similar Rhode Island statute that prohibited price advertising of alcoholic liquors.

Instructions: Repeal Regulations 7-34 and 7-49

Text:

No text is necessary since the proposal is only repealing regulations no longer needed since a ruling by the U.S. Supreme Court, in 44 Liquormart v. Rhode Island, 517 U.S. 484 (1996), held unconstitutional a similar Rhode Island statute that prohibited price advertising of alcoholic liquors.

Fiscal Impact Statement:

There will be no cost to the state or local political subdivision expenditures in complying with the proposed regulation. The benefits associated with the proposed changes to the state or local political subdivisions are uncertain.

218 FINAL REGULATIONS

Document No. 2636
DEPARTMENT OF REVENUE
CHAPTER 117
Statutory Authority: 1976 Code Section 12-4-320

Regulations:

| Type Tax | Regulation | Regulation Title |
|--------------|--------------------|--|
| Sales Tax | 117-174.38 | Automobile Dealer's Demonstrator |
| | 117-174.221 | Vendor's Discount |
| Property Tax | 117-109 | Determining the Fair Market Value of the Inventory Merchandise of Merchants |
| | 117-124.14 | Inventory Tax – Alcoholic Liquors |
| | 117-121 | Mobile Homes Located on Leased Land Assessed as Real Property |
| | 117-107 | Assessment of Manufacturers' Property |
| | 117-108 | Assessment of Property of Merchants |
| | Administrative | 117-5 |
| | 117-4 | Procedure for Appeal to the Tax Commission from a County Board of Tax Appeals when the Statute Providing for such Appeal Fails to Specify the Manner in Which the Appeal is to be Made or the Grounds Therefor and Limits the Appeal to "Relief as Afforded by General Law". |
| | 117-3 | Appeal Procedure Before County Tax Board of Appeals. |
| Estate Tax | 117-181.1 | Rules and Regulations |
| | 117-181.2 | Transfer of Securities, Deposits or Other Assets |
| | 117-181.3 | Transfer of Contents of Safe Deposit Boxes. |
| Income Tax | 117-60 | Nonresidents Having Income from a Business in this State Subject to Tax. |
| | 117-75 | When Sales Allocated to State of the Purchaser. |
| | 117-76 | Nonresident Partners of a Partnership May File Single Return. |
| | 117-77 | Filing of a Consolidated Return for Two or More Corporations. |
| | 117-79 | Extension of Time for Filing and Tentative Returns Required. |
| | 117-80 | Application for Refund of Deceased. |
| | 117-82 | Income Tax in Another State Defined. |
| | 117-84 | Bond for Nonresidents Conducting a Temporary Business. |
| | 117-85 | Filing of Reports and Annual License Fees of Corporations. |
| | 117-86 | Foreign Corporation Defined. |
| | 117-87.54 | Definitions of "Taxable", "State" and "Net Income Tax" in Connection with the Allocation Formula. |
| | 117-87.69 | Allocation and Apportionment of Income. |
| 117-87.74 | Nonresident Aliens | |

| | | |
|-------------|-----------|---|
| | 117-87.78 | Retirement Benefits Paid to Public School Teachers and State Employees Living in this State. |
| | 117-89.3 | License Fees--Professional Associations. |
| | 117-91.2 | Withholding on Casuals. |
| | 117-91.3 | Withholding of Rents |
| | 117-91.4 | Withholding on Rentals Paid to Nonresidents. |
| | 117-91.5 | Relieve Residents Working Without the State from Double Withholding. |
| | 117-91.6 | Agricultural Labor. |
| | 117-91.8 | Qualification to do Business. |
| | 117-91.9 | Credit for Tax Withheld by an Employee Even Though Not Paid to Tax Commission by Employer. |
| | 117-91.11 | When Federal Forms W-2, W-4 and 1099 are Acceptable by the South Carolina Tax Commission. |
| | 117-95.1 | Agreement for Withholding of Income Tax. |
| | | |
| License Tax | 117-32 | Stamps Required on Certain Articles. |
| | 117-33 | Records. |
| | 117-36 | Cigarettes Displayed in Vending Machines. |
| | 117-37 | Cigars. |
| | 117-44 | Documentary Stamps--Sale of by Others. |
| | 117-45.1 | South Carolina Documentary Stamps must be Affixed before Instrument is Recorded. |
| | 117-46 | Base of the Documentary Stamp Tax When Consideration Received for Property Transferred Does Not Have a Readily Ascertainable Fair Market Value. |
| | | |
| Video Game | 117-191.1 | Technical Standards for Video Game Machines. |
| | 117-191.2 | Technical Standards for Location Controller. |
| | 117-191.3 | Remote Shutdown of a Machine or Machines. |

Synopsis:

The South Carolina Department of Revenue is considering repealing various sales tax, property tax, administrative, estate tax, license tax, video game and income tax regulations since they are no longer needed due to changes in the law.

Instructions: Repeal Regulations

Text:

No text is necessary since the proposal is only repealing regulations no longer needed due to changes in the law.

Fiscal Impact Statement:

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

220 FINAL REGULATIONS

Document No. 2658
DEPARTMENT OF REVENUE
CHAPTER 117
Statutory Authority: 1976 Code Section 12-4-320

Regulations: All Sales and Use Tax Regulations in Article 7 of Chapter 117
(Regulations 117-145 through 117-178)

Synopsis:

The South Carolina Department of Revenue is proposing the repeal of Article 7 of Chapter 117 of the SC Code of Regulations (SC Regulations 117-145 through 117-178) and the creation of thirty-seven new regulations concerning sales and use tax in a new Article 11. Under the proposal, sales and use tax regulations are combined so that all regulations concerning one subject matter can be found in one regulation and therefore one place in the regulation code. In addition, each regulation would have several "subsections" numbered in a manner to allow future issues concerning the subject matter to be added on and still be in the same place in the regulation code as other similar issues. For example, all issues concerning agriculture can be found in one regulation under Regulation 117-301. This regulation has several "subsections" numbered 117-301.1, 117-301.2, and so on. The project reduces the number of regulations from 225 to 37. The proposal also incorporates longstanding department policy with respect to building material used in the construction of commercial housing for poultry and livestock, meals sold to or by medical institutions, colleges and universities, charges by hotels and similar facilities, transactions involving state and local governments, and the calculation of the tax when a manufactured home is sold with furniture, appliances and other items. This proposal organizes and numbers the regulations as follows:

| Regulation Number | Subject |
|-------------------|--|
| 117-300 | Retail Licenses |
| 117-301 | Agriculture |
| 117-302 | Manufacturers, Processors, Compounders, Miners and Quarriers |
| 117-303 | Laundries |
| 117-304 | State and Local Government |
| 117-305 | Meals |
| 117-306 | Repairs |
| 117-307 | Hotels, Motels and Similar Facilities |
| 117-308 | Services |
| 117-309 | Retailers |
| 117-310 | Freight and Delivery Charges |
| 117-311 | Railroads |
| 117-312 | Containers and Other Packaging Material |
| 117-313 | Labor |
| 117-314 | Construction |
| 117-315 | Newspaper |
| 117-316 | Books |
| 117-317 | Repossessed Property |
| 117-318 | Gross Proceeds of Sales and Sales Price |
| 117-319 | Warehousemen |
| 117-320 | Use Tax |
| 117-321 | Ships |
| 117-322 | Casual and Isolated Sales |
| 117-323 | Residential Heating |
| 117-324 | Dual Business |

| | |
|---------|--|
| 117-325 | Bulk Sales |
| 117-326 | Saving and Loan Associations |
| 117-327 | Leased Departments |
| 117-328 | Radio and TV Stations |
| 117-329 | Communications |
| 117-330 | Automatic Data Processing |
| 117-331 | Airport Fixed Based Operators |
| 117-332 | Medicine and Prosthetic Devices |
| 117-333 | Donors and Goods Given Away for Advertising Purposes |
| 117-334 | Interstate Commerce |
| 117-335 | Manufactured and Modular Homes |
| 117-336 | Definition of a Facility |

Instructions: Repeal all Regulations in Article 7 of Chapter 117 (SC Regulations 117-145 through 117-178), and add the following Regulations in a new Article for Sales and Use Tax Regulations

Text:

117-300 Retail License

As a condition precedent to doing business in this state, every retailer shall obtain a retail license for each retail outlet.

117-300.1 Doing Business in South Carolina

Every retailer making sales of tangible personal property for storage, use or other consumption in this state, who:

1. Maintains a place of business;
2. Qualifies to do business;
3. Solicits and receives purchases or orders by agent or salesman

must obtain from the department a retail license.

117-300.2 Vending and other Coin-Operated Machines Dispensing Tangible Personal Property

For the purpose of determining the licenses required by persons engaged in the business of operating vending or coin-operated machines dispensing cigarettes and soft drinks in closed containers in this state, each point from which the service for such machines or other tangible personal property originates, shall be considered to be a retail outlet and a retail license must be obtained for each such point of service.

117-300.3 Operation of Deceased Licensed Retailer's Business by Personal Representative of His Estate.

The personal representative of the estate of a deceased licensed retailer may, upon filing with the department a certified copy of Letters Testamentary or Letters of Administration, as the case may be, and upon the approval of the department, continue the operation of the business covered by the license for purposes only of administering the estate.

117-300.4 Application for Transfer.

222 FINAL REGULATIONS

A licensed retailer may, upon written application and approval by the department, have transferred his retail dealer's license from one location to another without incurring additional license tax liability. This rule is for application only in cases where there is an abandonment of the licensed business location and a simultaneous moving to a new location. The licensed retailer making application for transfer must surrender his license of original issue and indicate on the license the address of his new location.

117-300.5 Fairs, Carnivals, Concessionaires at Athletic Stands and Other Public Exhibitions.

Operators of fairs, carnivals and concessionaire at athletic stands and other public exhibitions sell tangible personal property from booths which they operate. These sales are subject to the tax which must be remitted by the operator who controls or directs the management of such booths. The single retail license shall cover sales of tangible personal property made from all stands under the immediate management or control of each operator. A separate license will not be required for each change of location provided the operator furnishes the department an itinerary giving a schedule of locations and dates.

Persons conducting games of chance or skills at fairs, carnivals, circuses and other public exhibitions who deliver merchandise as prizes are deemed consumers of such articles. Property for use as outlined above purchased from without the state is subject to the tax based upon the reasonable and fair market value thereof at the time and place where used. The term "reasonable and fair market value" shall mean the retail selling price of the particular property involved in the absence of affirmative proof to the contrary. The taxable event in such cases occurs at the time of withdrawal of such property for use as prizes or gifts. Purchases in this state, of tangible personal property to be used as gifts or prizes, are subject to the sales tax. The purchaser thereof must pay his supplier the tax.

117-300.6 Partnership.

When a partner drops out of a partnership during the year, it is not necessary for the surviving partner to purchase a new retail license to cover the remainder of the fiscal year.

117-301 Agriculture

The South Carolina sales and use tax law provides many exemptions from the tax for the agriculture industry. The exemptions are found in Code Section 12-36-2120 and include exemptions for livestock, feed, insecticides, chemicals, fertilizers, containers, labels, machinery, fuel, electricity, gas, and building materials. In order to obtain an exemption, all provisions of the exemption must be met. This regulation will explain these exemptions in more detail.

In many of the subsections of this regulation, examples of items exempt and not exempt are provided. These examples are not all inclusive.

117-301.1 Livestock

The sale of livestock is exempt from the tax under Code Section 12-36-2120(4). Livestock is defined as domesticated animals customarily raised in South Carolina farms for use primarily as beasts of burden or food. Livestock also means mammals raised for their pelts or furs.

The practical result of the above is to exempt from the tax horses, mules, cattle, swine, sheep, goats, rabbits, ostriches and any other animals raised as food for human consumption, domesticated fish produced for human consumption, and chinchillas

Animals such as dogs, cats, reptiles, fowls (excepts baby chicks and poults), minnows, worms, fish (excepts those cultivated for human consumption), and animals of a wild nature are not considered livestock.

117-301.2 Feed

The sale of feed used in the production and maintenance of livestock, as defined Regulation 117-301.1, is exempt from the tax under Code Section 12-36-2120(5). Horse feed, rabbit feed used in the production and maintenance of rabbits for human consumption, and feed used in the production and maintenance of fry, fingerlings and fish are exempt.

117-301.3 Insecticides, Chemicals, Fertilizers, Soils Conditioners, Seeds and Seedlings

Insecticides, chemicals, fertilizers, soils conditioners, seeds and seedlings used solely in the production for sale of farm, grove, vineyard or garden products are exempt under Code Section 12-36-2120(6). This exemption includes:

- (a) explosives (chemicals) used solely in the production for sale of farm, grove, vineyard or garden products.
- (b) medicines (chemicals) used solely in the production for sale of livestock.
- (c) insecticides, chemicals, fertilizers, soils conditioners, seeds and seedlings used solely in the production for sale of timber and timber products, nursery products, and poultry and poultry products.
- (d) insecticides and chemicals, including washing powder, soap, etc., used by dairy operators at the dairy barn in the production for sale of products of the dairy.
- (e) bull semen used solely in the production for sale of livestock.

This exemption does not apply to liquid petroleum gas used for burning grass and weeds around farm crops.

117-301.4 Containers and Labels

Containers and labels used in preparing agriculture products for sale and used in preparing turpentine gum, gum spirits of turpentine, and gum resins for sale are exempt under Code Section 12-36-2120(7). For the purposes of this exemption, "containers" means boxes, crates, bags, bagging, ties, barrels, and other containers.

This exemption applies to bags sold to:

- (a) wholesale grain and feed dealers for use as furnished containers of corn and oats.
- (b) cotton dealers or ginneries for use as furnished containers of cotton seed.
- (c) produce dealers for use as furnished containers of potatoes, cabbage, etc.
- (d) peanut hullers for use as furnished containers of peanut kernels, hulls, and vines.
- (e) nurserymen for use as furnished containers of nursery stock.

Wrapping paper, wrapping twine, paper bags, and containers, used incident to the sale and delivery of tangible personal property are exempt under Code Section 12-36-2120(14).

The above exemptions do not apply to tobacco twine used by farmers incident to the curing of tobacco.

224 FINAL REGULATIONS

117-301.5 Farm Machinery

The sale of farm machinery that is used in planting, cultivating or harvesting farms crops for sale is exempt under Code Section 12-36-2120(16). This exemption also applies to replacement parts and attachments. For purposes of this exemption, the terms “planting,” “cultivating,” and “harvesting” are defined as follows:

“Planting” includes all necessary steps in the preparation of the soil prior to, and including, the planting and sowing of the seed.

“Cultivating” includes the loosening of the soil around growing plants, control of moisture content in the soil, and weed and pest control.

“Harvesting” begins with the gathering of the crop and ends when the crop is placed in a temporary or permanent storage area. It also includes the additional preparation for storage or sale of certain crops such as the curing of tobacco, grains, and peanuts and the grading and packaging of peaches, cucumbers, tomatoes, etc.

The sale of bulk coolers (farm dairy tanks) used in the production and preservation of milk on dairy farms and machines used in the production of poultry and poultry products on poultry farms when such products are sold in the original state of production or preparation for sale are also exempt under Code Section 12-36-2120(16).

The following machines qualify for this exemption:

(a) machinery used in constructing terraces, drainage and irrigation ditches, dikes used to control the water level in cultivated fields, and land clearing prior to cultivation of the soil.

(b) machinery specially designed for irrigation purposes, including pumps, pipes, spigots, etc., when sold for use in the cultivation of farm crops.

(c) farms wagons used in planting, cultivating or harvesting farm crops.

(d) pasteurizing machines, cooling machines, mechanical separators, homogenizing machines and bottling machines used by dairies in the production of milk for sale. Milking machines do not come within the exemption for farm machinery.

(e) machines used in the production of poultry and poultry products for sale when incorporated into and made a part of an automated system. This includes automated bulk feed bins placed either inside or outside the building when such bins are connected to automatic feeding systems; the auger conveying feed from bulk feed bins to the automated feeder system; roll-up curtains (hand crank and motorized) to control light and room temperature; automatic chain feeders; auger and pan feeders; automatic waterers, valves, and accessories, brooders-all types, winching systems used to raise and lower brooders to control room temperature and also to facilitate cleaning; electric debeakers; egg washing machinery; egg grading machinery; egg candling machinery; time clocks for controlling lights or machinery; automated nests only; belt gathering systems for nests; laying cages when a part or attachment to an automated feeding and/or watering system; mechanically operated feed carts; bulk feed bodies (the vehicles on which these bodies are mounted are subject to the tax as well as nonmechanized carts); automatic clean-out systems for cage houses; small tractor or Bobcat used for clean-out of poultry houses; machinery used to cool eggs; humidifiers for egg rooms; auxiliary power generators; ventilation equipment for poultry houses (to include fans and motorized shutter assemblies); electric heat tapes (water warmers); monorail system for use in conveying eggs in process; automatic medication proportioners; incubators; scales used in loading mixing buggies to gauge the amount of feed per chicken; electric shockers and wire over automatic troughs; (electrified wire fences would be subject to the tax unless exempt under Section 12-36-2120(45)); vibrators; infrared brooders (heat lamps used primarily to brood quail); and incinerators.

Examples of properties not exempted from the tax under Section 12-36-2120(16) are building materials, fencing and fence posts, hand tools, range waterers and feeders (unless completely mechanized), egg baskets and stackers, hand trucks and nonmechanized egg carts, dollies, brooding paper and guards, nesting materials, boots, gloves, hand-operated sprayers and powder dusters, mouse traps (all types), leg bands, wing bands, and nest eggs. (Note: Some of these items may be exempt under Section 12-36-2120(45).)

(f) animal and motor drawn or operated implements such as plows, harrows, hay rakes, mowers, cultivators, and planters.

(g) machinery used in planting, cultivating, and harvesting timber products.

(h) tobacco curers (not including flues and furnaces).

(i) a flatbed trailer or a stock trailer used for hauling farm crops (i.e. hay, corn, peaches) if the flatbed trailer or stock trailer is used substantially in planting, cultivating, or harvesting such farm crops for sale in their original state of production or preparation for sale.

(j) animal and motor drawn or operated tobacco transplanters

(k) portable power saws for use in planting, cultivating, or harvesting farm crops may be purchased free of the tax. The term "farm crops" includes forest products or products of the forests.

(l) skidders used in logging operations, when used either by sawmills or by contract loggers.

(m) machinery purchased by operators of commercial fisheries and used directly in fishing operations, such as motor operated watercraft and nets attached to booms or cranes for lowering into the sea bed.

(n) machinery purchased by commercial crabbers and used directly in crabbing operations, such as motors, mechanical capstans, and crab traps when such traps are hoisted by capstans.

This exemption does not apply to:

(a) automobiles and trucks.

(b) machinery used in constructing fences and buildings and repairing machinery and equipment.

(c) farm implements which are not animal and motor drawn or operated, such as hoes, pitchforks, and shovels.

(d) tobacco thermometers.

(e) a flatbed trailer or a stock trailer used for hauling tractors, harvesting equipment or cattle or for hauling farm crops from a storage area to market or to a buyer.

(f) tobacco transplanters which are not animal and motor drawn or operated.

(g) greenhouses.

117-301.6 Fuel

226 FINAL REGULATIONS

Fuel used in farm machinery and farm tractors used in planting, cultivating, or harvesting farm crops and fuel used to cure agricultural products is exempt under Code Sections 12-36-2120(15) and 12-36-2120(18). This applies to fuel used in curing grain in grain elevators for storage or sale.

117-301.7 Electricity and Gas

The following sales of electricity and gas are exempt:

(a) sales of electricity and natural and liquefied petroleum gas to farmers for use in the production of livestock or milk (Code Section 12-36-2120(32)).

(b) sales of electricity for irrigating farms crops (Code Section 12-36-2120(44)).

Sale of electricity and gas to farmers for other uses are taxable.

117-301.8 Building Materials, Supplies, Fixtures and Equipment for Commercial Housing of Poultry and Livestock

Sales of building material, supplies, fixture, and equipment used in the construction, repair, or improvement a commercial housing of poultry or livestock, or that becomes part of a self-contained enclosure or structure designed, constructed and used for the commercial housing of poultry or livestock, are exempt under Code Section 12-36-2120(45).

This exemption applies to:

(a) wood chips for use on the floors of self-contained enclosures or structures specifically designed, constructed, and used for the commercial housing of poultry.

(b) fencing and fencing supplies when used to surround an area on all sides in order to protect livestock or poultry raised or maintained for commercial purposes. The exemption is applicable when the fencing and fencing supplies are used within a building such as a barn or a chicken house or used to surround a field that is specifically set aside and used for livestock or poultry that is raised or maintained for commercial purposes.

(c) watering tubs, feed troughs, and hay feeders placed within a fenced in area specifically set aside and used for livestock or poultry, provided the livestock and poultry within the enclosure are being raised or maintained for commercial purposes

The exemption does not apply to fencing and fencing supplies used to surround a field where crops are grown.

117-301.9 Sales by Farmers

Sales of farm products are exempt if sold in their original state of production and sold by the farmer or a member of the farmer's immediate family. This exemption not only applies to sales of farm products by individuals; it also applies to sales by corporations and other entities. The exemption applies to food products, ornamental plants, timber, and grass sod.

The exemption is not applicable if the farmer processes his product beyond the usual and customary preparation for sale. For example, where a farmer also operates a processing plant, he cannot claim the exemption for sales of these processed products.

117-301.10 Hatcheries

The hatchery operator may purchase under his retail license hatchery eggs for use in hatching baby chicks for sale. Hatchery eggs may be sold free of the tax to a hatchery operator not having a retail license, provided, the seller thereof takes from such operator a certificate that the property is for resale either in the original form or as baby chicks or as full grown chickens. Hatcheries engaged in the business of hatching baby chicks for others from eggs grown by those other persons (custom hatching) are rendering a service which is not subject to the tax.

117-302 Manufacturers, Processors, Compounders, Miners, and Quarries

Manufacturers, processors, compounders, miners, and quarries enjoy several exclusions and exemptions from the sales and use taxes. The exclusions can be found in Code Section 12-36-120 and includes containers, ingredients and component parts, and items used directly in manufacturing, compounding or processing tangible personal property for sale. The exemptions can be found in Code Section 12-36-2120 and include exemptions for coal, coke, fuel, electricity, and machines. This regulation will explain these exclusions and exemptions in more detail.

In many of the subsections of this regulation, examples are provided. These examples are not all inclusive.

117-302.1 Ingredients and Component Parts and Items Used Directly

Purchases of tangible personal property are not subject to the tax under Code Section 12-36-120 if the tangible personal property:

(a) becomes an ingredient or component part of tangible personal property manufactured or compounded for sale; or,

(b) is used directly in manufacturing, compounding or processing tangible personal property for sale. By “used directly” is meant that the materials or products so used come in direct contact with and contribute to bring about some chemical or physical change in the ingredient or component properties during the period in which the fabricating, converting or processing takes place. It is not necessary that such materials or products be used up or entirely consumed, provided there is a compliance with the requirements set forth herein.

These exclusions apply to:

(a) odorants purchased by gas companies and used in compounding gas for sale.

(b) chemicals, such as soda, ash, alum, chlorine, etc., used in treating water for sale by municipalities and others engaged in the business of processing or compounding water for sale.

(c) refrigerants used by manufacturers to produce ice for sale.

(d) acetylene, oxygen, and other gases sold to manufacturers or compounders which enter into and become an ingredient or component part of the tangible personal property or products which he manufactures or compounds for sale, or which are used directly in fabricating, converting, or processing the materials or products being manufactured or compounded for sale.

(e) plates attached by the manufacturer to his product for identification purposes and which become a part of the product.

These exclusions do not apply to sales of acetylene, oxygen, and other gases for use by repairman, welders, dentists, junk dealers, and others are subject to the sales or use tax, whichever applies.

117-302.2 Containers

228 FINAL REGULATIONS

The sale of materials, containers, cores, labels, sacks or bags used incident to the sale and delivery of tangible personal property or used by manufacturers, processors, or compounders in shipping tangible personal property are not subject to sales and use taxes.

“Materials” is defined to include, among other things, wrapping paper, twine, strapping, nails, staples, wire, lumber, cardboard, adhesives, tape, waxed paper, plastic materials, aluminum foils, and pallets used in packaging tangible personal property incident to its sales and delivery and used by manufacturers, processors, or compounders in shipping tangible personal property.

“Containers” is defined to include, but are not limited to, such items as, paper, plastic or cloth sacks, bags, boxes, bottles, cans, cartons, drums, barrels, kegs, carboys, cylinders, and crates.

“Cores” is defined to include spools, spindles, cylindrical tubes and the like on which tangible personal property is wound.

This exclusion applies to:

(a) labels affixed to manufactured articles to identify such products only when such labels are passed on to the ultimate consumer of such products.

(b) excelsior, cellulose wadding, paper stuffing, sawdust and other packing materials used to protect products in transit. Also excluded from the exemption are materials such as strapping and dunnage to temporarily brace or block tangible personal property within trucks and railroad cars as a protection during shipment.

(c) hogsheads, when used by a manufacturer, compounder or processor for the purpose of packaging tobacco for shipment or sale.

This exclusion does not apply to:

(a) address stickers and shipping tags.

(b) materials such as dry ice and rust preventives used to preserve property during shipment.

117-302.3 Coal, Coke or Other Fuel

Code Section 12-36-2120(9) directs that only certain classes of purchasers may buy free of the tax coal, coke or other fuel.

Coal, coke or other fuel sold to manufacturers, quarriers and miners for use in manufacturing, quarrying or mining tangible personal property for sale or for the production of by-products or for the generation of electric power or energy for use in manufacturing tangible personal property for sale.

Coal, coke or other fuel sold to manufacturers, quarriers, miners, or processors for the generation of heat or power used in manufacturing, quarrying, mining, or processing tangible personal property for sale.

This exemption applies to fuel used to control plant atmosphere as to temperature and/or moisture content, in the quality control of tangible personal property being manufactured or processed for sale.

117-302.4 Electricity

Electricity used by manufacturers, miners, quarriers, and processors to manufacture, mine, quarry, or process tangible personal property for sale is exempt from the tax under Code Section 12-36-2120(19).

Sales of electricity to manufacturers, miners, quarriers, and processors for use in operating machines manufacturing, mining, quarrying, or processing tangible personal property for sale and electricity to provide lighting necessary to the operation of such machines are exempted from the sales and use tax. This exemption applies to electricity used to control plant atmosphere as to temperature and/or moisture content, in the quality control of tangible personal property being manufactured or processed for sale..

Sales of electricity for any other purpose are subject to the tax, such as but not limited to, electricity used in administrative offices, supervisory offices, parking lots, storage warehouses, maintenance shops, safety control, comfort air conditioning, elevators used in carrying personnel, housekeeping equipment and machinery, machines used in manufacturing tangible personal property not for sale, cafeterias, canteens, first aid rooms, supply rooms, water coolers, drink boxes, unit heaters and waste house lights.

117-302.5 Machines

Machines used in manufacturing, processing, compounding, mining, or quarrying tangible personal property for sale, and the replacement parts and attachments to such machines, are exempt from the sales and use tax under Code Section 12-36-2120(17).

Parts of machines, attachments, and replacements used, or manufactured for use, on or in the operation of machines are also exempt, provided the parts, attachments or replacements are used on or in the operation of such machines, manufactured for use on or in the operation of such machines, necessary to the operation of such machines, and must be customarily so used. These restrictions are interpreted to mean that the part or attachment must be purchased in the form in which it will be used by the manufacturer without any fabrication or alteration by him, except the usual and customary minor adjustment, (except as stated below) and that it is a standard part or attachment customarily used and, further, that the machine or machinery on which it is used would not do the work for which it was designed if it were not used. This, of course, exempts all parts and attachments without which the machine would do no work, and, in addition, it exempts parts and attachments designed to increase the efficiency of the machine.

Manufacturers, processors, compounders, miners or quarriers are entitled to purchase at wholesale, free of the sales or use tax, materials used by them in the building of machines for the purpose of manufacturing or compounding tangible personal property for sale. It should be noted that only those materials are exempt to manufacturers, processors, compounders, miners or quarriers which are used by them in building machines for the purpose of manufacturing or compounding tangible personal property for sale. This ruling would not be for application in the case of the use of property in the nature of building materials from which there is erected a "structure," which upon completion might be used for producing tangible personal property for sale.

Electricity is tangible personal property and is characterized as such in the law. Therefore, its production is considered as manufacturing and all machinery used for the generation, such as boilers, engines, condensers, generators, and transformers and their attachments, are exempt. Electrical equipment used as direct controls of machinery used in manufacturing is considered as part of manufacturing machinery and as such is exempt. All wires, fixtures, etc., used in lighting are taxable.

Materials or equipment which might constitute a machine or machinery when not used for processing or manufacturing are not exempted.

This exemption applies to:

(a) trucks too large to be lawfully used upon the highways of this state, when used in quarry pits for transporting rock or granite from the blasting site to the crushing machine.

(b) sand handling and sand condition machines used by manufacturers or processors for conditioning and transporting, while in process, and for use in mold making.

230 FINAL REGULATIONS

- (c) tanks which are a part of the chain of processing operations.
- (d) patterns which become parts or attachments for molding machines when purchased by a manufacturer for his use.
- (e) mechanically operated devices used in making molds from sand for use in manufacturing tangible personal property for sale.
- (f) machines used in measuring, or weighing, and packaging by manufacturers, compounders and processors when such machines are a part of the "production line" machinery and are used to put the product in condition for sale on the open market for the purpose for which it was produced.
- (g) machines used in weighing and sacking cement and lime when used by the manufacturer.
- (h) machines used to measure and sack corn meal when used by the manufacturer.
- (i) machines used by soft drink bottlers for measuring and bottling their product.
- (j) transformers used in manufacturing and processing tangible personal property for sale, used by producers or distributors of electricity which process the electricity, and all transformers used by other manufacturers, processors, or compounders as a part of their manufacturing, processing, or compounding machinery. Capacitors and voltage regulators are similar to and have the same exemption as transformers.
- (k) machines used by cotton ginnerers in their processing operations.
- (l) pasteurizing machines, cooling machines, mechanical separators, homogenizing machines and bottling machines used by dairies in processing milk for sale. The machine exemption does not extend to cover milking machines.
- (m) boiler tubes used in repairing boilers used to furnish heat or power used in manufacturing tangible personal property for sale.
- (n) machines used by persons in the business of producing scrap iron and other metals from junk for resale to steel mills and/or foundries, such as hydraulic baling presses (to compress sheet steel into bales), cranes (to feed scrap metals to baling press), and alligator shears (to cut scrap steel to predetermined sizes).
- (o) machines used by dental laboratories in manufacturing for sale plates, bridgework, artificial teeth and other prosthetic devices.
- (p) machines used in processing and manufacturing by electric power companies including all producing stationary machines in an electric power generating house, stationary, processing machines located in substation houses and transformers, pole or otherwise.
- (q) starters, switches, circuit breakers and other electrical equipment which are parts of, or attachments of machines, come within the machine exemption. In order to be exempt this equipment must be either attached directly to the machine or be immediately adjacent thereto. Switchboards and control boards and cabinets controlling the general electrical supply system are not considered to be parts or attachments of machines used in manufacturing. (Note, however, that, switchboards, automatic or manually operated, which serve to operate exempt machinery may be classified a part or attachment thereto, provided, same are attached thereto or located within the same structure or compound.) The general rule is that power distribution machinery for operating machines used in processing and manufacturing tangible personal property which starts at the main switch within the factory building or compound is exempt.

(r) machines used directly in the wood preserving process by persons engaged in the business of treating lumber or lumber products (wood preserving) which they own and treat for sale.

(s) gas pressure regulators located in the lead off from the gas main.

(t) machines used directly in the meatpacking process by meatpackers whose activities include the curing of meats and the production of animal by-products such as lard, sausages, or tannage.

(u) machines used directly by ice manufacturers in manufacturing or compounding ice for sale.

(v) machines used to condition air (including humidification systems) for quality control during the manufacturing process of tangible personal property made from natural fibers and synthetic materials. This exemption applies to the pipes and duct used to distribute the processed air to the production areas within the plant.

(w) recording instruments attached to manufacturing machines.

(x) machines used directly by a manufacturer in the tire recapping process.

(y) machines used by municipalities in processing or compounding water for sale.

(z) belting purchased for use on a particular machine used in manufacturing tangible personal property for sale even though such belting may not be purchased to the exact length required.

(aa) machines manufactured for and customarily used in removing sawdust from saws in sawmills manufacturing lumber for sale when such machines are attached to or a part of the sawing mechanism and machines manufactured for and customarily used to remove waste material from planners, edgers, and other manufacturing machines used in sawmills manufacturing lumber for sale when such machines are attached to or a part of the planner, edger, or other manufacturing machine. Note, however, the removal or disposal of waste materials is not of itself a manufacturing process on which a claim for exemption could be based. The waste removal machinery must be an attachment of an exempt machine to come within the exemption.

(bb) machines purchased by persons in the business of collecting old and used paper (waste paper) for the purpose of grading, sorting and packaging the same for sale or resale to paper mills.

(cc) insulation for pipe coverings, tank coverings, and boiler insulation purchased by a paper manufacturer from the vendor in its final prefabricated form for a specific insulation job, provided it does not have to be cut and fitted at the paper mill. Certain fabrication is permissible around valve openings, pipe openings at pipe joints, etc. Note, where insulation is purchased in blocks, such blocks are to be considered as taxable, except as noted above with respect to the purchase of material in building a machine used in manufacturing, processing, or compounding tangible personal property for sale.

This exemption does not apply to:

(a) warehouse machines used only for warehouse purposes, such as loading and unloading, storing, or transporting raw materials or finished products.

(b) storage tanks and piping leading to and from storage tanks and piping bringing gas or water into the plant.

(c) power lines bringing electricity into the plant.

(d) dippers used for measuring purposes in a textile bleachery, dye or finishing plant.

232 FINAL REGULATIONS

(e) machines used for maintenance purposes.

(f) pipe, valves, fittings, etc., regardless of size, which are purchased by paper manufacturers specifically for use in drinking water lines, fire protection lines, or for transmission of water from source to water treatment plant, or from water treatment plant itself.

(g) piping furnished and installed along with pump houses and well connections by a contractor when intended for use by a paper manufacturer to supply his plant with the water necessary to the manufacturer of paper.

117-302.6 Pollution Control Machines

Code Section 12-36-2120(17) exempts from the sales or use tax the gross proceeds of the sale of machines used in mining, quarrying, compounding, processing and manufacturing of tangible personal property and the term "machine" includes parts of such machines, attachments and replacements therefor which are used or manufactured for use on or in the operation of such machines and which are necessary to the operation of such machines and which are customarily so used ..." Frequently, these machines cannot be operated when the same pollute beyond regulated levels and in compliance with orders of agencies of the United States or of this state to abate or prevent pollution caused or threatened by the operation of such machines it is necessary to install other machines that are designed and operated exclusively for the purpose of abating or preventing this pollution. The purpose of this regulation is to classify the machines, their parts or attachments, as machines used in mining, quarrying, compounding, processing or manufacturing of tangible personal property when the same are installed and operated for compliance with an order of an agency of the United States or of this state to prevent or abate pollution caused or threatened by the operation of other machines used in the mining, quarrying, compounding, processing and manufacturing of tangible personal property.

The term "machine" as defined in Section 12-36-2120(17) shall include machines, their parts and attachments, when the same are necessary to comply with the order of an agency of the United States or of this state for the prevention or abatement of pollution that is caused or threatened by any machines used in the mining, quarrying, compounding, processing and manufacturing of tangible personal property.

Any person engaged in the business of mining, quarrying, compounding, processing and manufacturing of tangible personal property shall furnish the department a certified statement from the ordering agency that any machine for which the exemption is claimed is necessary to prevent or abate pollution caused or threatened by the operation of other machines that are used in the mining, quarrying, compounding, processing or manufacturing of tangible personal property.

The order referred to herein must be issued by the agency of the United States or of this state that is primarily charged with the duty of preventing or abating the pollution.

117-302.7 Outside Signs, Furnished.

Outside signs furnished by a manufacturer to his customers, when such signs are furnished without cost to the customers, are subject to sales or use tax when purchased by the manufacturer. These signs are not purchased to be resold nor are they purchased as a component of the property manufactured for sale by the manufacturer.

117-302.8 Patterns, Sales.

Certain manufacturers in the operation of their businesses purchase for their customers patterns which are used by the manufacturers in the production of property for sale to their customers. When such patterns are received by the manufacturers, they are then sold to the manufacturers' customers. The manufacturers purchase these patterns at wholesale and sell them to their customers at retail. The manufacturers' sale to their customers are subject to

tax even though the customer is a nonresident of South Carolina and even though the pattern, after use by the manufacturer in South Carolina, may be shipped to the customer outside the state.

117-303 Laundry, Launderette, Cleaning, Dyeing or Pressing Establishments

Code Sections 12-36-910 and 12-36-1310 impose the sales and use taxes on the “gross proceeds accruing or proceeding from the business of providing or furnishing any laundering, dry cleaning, dyeing, or pressing service, but does not apply to the gross proceeds derived from coin-operated laundromats and dry cleaning machines.”

The gross proceeds accruing or proceeding from the business of providing or furnishing “any laundering, dry cleaning, dyeing or pressing service,” is construed to mean all charges made by such businesses including charges for repairing, altering, storing, pick-up, and delivery of the product so laundered, dry cleaned, dyed or pressed.

Code Section 12-36-2120(24) exempts from the sales and use taxes “supplies and machinery used by laundries, cleaning, dyeing, pressing, or garment or other textile rental establishments in the direct performance of their primary function, but not sales of supplies and machinery used by coin-operated laundromats.”

A machine exempted from the tax under Code Section 12-36-2120(24) is construed to mean any machine used in the “production line” of such laundry, launderette, cleaning, dyeing or pressing establishment, beginning with the marking of the garment for identification and ending with the wrapping or preparation of the garment for return to customer and any machine used in the cleaning production line of a garment or textile rental establishment for the purpose of cleaning garments and textiles for rent to customers.

Supplies are determined to mean supplies, including fuel, that are necessary to work with or on the garment in order to perform the primary function of the laundry, launderette, cleaning, dyeing or pressing business or supplies, including fuel, used in the cleaning production line of a garment or textile rental establishment for the purpose of cleaning garments and textiles for rent to customers.. The exemption for supplies does not include equipment such as desks, chairs, typewriters, adding machines, cash registers, change machines, counters, delivery equipment, or any administrative or advertising supplies or equipment.

117-303.1 Retailers' License-Laundries, Launderettes, Cleaning, Dyeing or Pressing Establishments.

Each pickup and/or delivery point shall constitute a separate branch or establishment of the business.

117-303.2 Rug and Carpet Cleaning

Persons operating places of business for the purpose of cleaning and/or dyeing of rugs must be licensed and must report and pay the sales tax measured by the gross proceeds derived from this cleaning or dyeing service. Such persons would be entitled to the exemptions found at Section 12-36-2120(24).

A person performing what is commonly referred to as janitorial service, that is washing windows, blinds, floors, rugs, upholstery, all or part thereof, in the home or place of business of his customers, is not liable for the license, but must pay the tax on all items of tangible personal property used in the performance of these services. This would also be true of a person

whose sole business is the cleaning of rugs and carpets in the home or place of business of his respective customers.

Where a person or company operates in a dual capacity, which is to say, cleaning and dyeing of rugs in his own business establishment and also cleaning of rugs and carpets in the home or place of business of his customer, he would be liable for the license and the tax measured by the gross proceeds of the entire business, unless he can separate the two. Where he can satisfactorily separate the two, he should pay the tax on all supplies, machinery, equipment, etc., used in his house to house cleaning but would be entitled to the statutory exemptions at his plant and would he owe the tax there on the gross proceeds from his cleaning and dyeing operations.

234 FINAL REGULATIONS

117-303.3 Furnishing Laundry Services, Etc. to Ships

The gross proceeds accruing or proceeding from the business of providing or furnishing any laundering, dry cleaning, dyeing or pressing service, to ships for use or consumption aboard such ships in intercoastal trade or foreign commerce are exempt from the tax by reason of Code Section 12-36-2120(13).

117-303.4 Cleaning, Glazing, Dyeing and Storing Furs

The gross proceeds accruing or proceeding from the cleaning, glazing and/or dyeing of furs are subject to the tax. Charges for storage, as such, when made separate and apart from any charges for cleaning, glazing and/or dyeing of furs are excluded from the measure of the tax.

117-304 Sales to, or Purchases by, the State, Counties, Municipalities and Other Political Subdivisions of the State

Sales of tangible personal property by the State, counties, municipalities and other political subdivisions of the State (e.g. schools, sheriff offices, municipal housing authorities, welfare agencies) are subject to the sales tax, unless such sales fall within the provisions of Regulation 117-304.1 (transfers by State agencies to other agencies, counties or municipalities at cost) or are otherwise exempt. (See Code Sections 12-36-2120 and 12-36-2130 for the exemptions.)

Sales to, or purchases by, the State, counties, municipalities, and other local political subdivisions (e.g. schools, sheriff offices, municipal housing authorities, welfare agencies) of tangible personal property are subject to the sales and use tax, unless such sales fall within the provisions of Regulation 117-304.1 (transfers by State agencies to other agencies, counties or municipalities at cost) or are otherwise exempt. (See Code Sections 12-36-2120 and 12-36-2130 for the exemptions.)

"Tangible personal property" includes laundry and dry cleaning services, electricity, certain communications services, accommodation services and certain other services that are subject to the sales and use taxes under Chapter 36 of Title 12. Therefore, transactions with the State or its political subdivision involving these services are subject to the sales and use tax, unless such sales fall within the provisions of Regulation 117-304.1 (transfers by State agencies to other agencies, counties or municipalities at cost) or are otherwise exempt.

117-304.1 Transfers Between Agencies and Between the State and its Political Subdivisions

An agency of the State of South Carolina is not deemed to be engaged in the business of selling tangible personal property at retail when transferring tangible personal property to another agency of the State or to a county or to a municipality if the consideration for the transfer only reimburses the transferring agency for its cost and expenses in conveying the property; provided transferring agency has paid tax on the initial purchase of the tangible personal property.

Where, however, a State agency sells tangible personal property to persons other than another State agency, county, or municipality for use or consumption, such sales shall be considered retail sales subject to the tax. The agency making the sale is required to be licensed as a retailer under the terms and provisions of the sales and use tax law.

117-305 Meals

Depending on the institution, meals to students, patients, guests, visitors, passengers, and other customers may be handled in a variety of ways. The following will address the application of the sales and use tax to these various transactions and institutions.

117-305.1 Educational Institutions

Colleges and universities sell or provide meals and other foods in a variety of ways.

Meals are provided to students in a cafeteria under a board plan. Under such plans, students will purchase all their meals (breakfast, lunch and dinner) for an entire semester or year at the beginning of the school year. This is usually done at the same time students pay their tuition and other fees. Typically, the student who signs up for one of the board plans is given a card that is used by the student to obtain the meals.

In addition, students who participate in a limited board plan may purchase individual meals sold by the college or university in the cafeteria. For example, one board plan may furnish meals to students Monday through Friday. A student under this limited plan may from time to time choose to purchase an individual meal in the cafeteria on Saturday or Sunday.

Employees, visitors and students who do not participate in a board plan may also purchase meals sold by the college or university in the cafeteria. Generally, these meals are purchased on an individual basis; however, some colleges and universities sell tickets that entitles the purchaser to several meals.

Also, colleges and universities may sell meals and food to students and others at canteens, snack bars, and other places around the campus. In addition, food may be sold at concession stands at sporting and theatrical events.

Finally, colleges and universities may contract with food service companies to sell or furnish meals on campus. Under such contracts, the food service company will either be an agent of the institution or will sell the meals to the institution, who has sold the meals to the students via a board plan.

Meals Served Under Board Plan

1. Sales to an educational institution of unprepared food products, for use in furnishing meals under a board plan, are retail sales subject to the sales tax or the use tax.
2. Sales to a food service company of unprepared food products, for use in furnishing meals under a board plan, are retail sales subject to the sales tax or the use tax if the food service company is the agent of the educational institution.
3. Sales by food service companies of meals to an educational institution or directly to the students, as part of a board plan, are retail sales subject to the sales or the use tax if the food service company is merely under contract with the educational institution and is not the agent of the educational institution.

For additional information concerning sales by, and purchases from, suppliers (including information on resale certificates), see sections 117-305.3 and 117-305.4 below.

Cash or Other Food Sales, Not Under a Board Plan

1. Sales by an educational institutions of meals and other foods (including the purchase of tickets that entitles the purchaser to several meals), other than those furnished under a board plan, are retail sales subject to the sales tax or the use tax.

236 FINAL REGULATIONS

2. Sales of meals and other foods by a food service company as the agent of an educational institution, other than those furnished under a board plan, are retail sales subject to the sales tax or the use tax.

3. Sales of meals and other foods by a food service company, other than those furnished under a board plan, are retail sales of the food service company subject to the sales or the use tax.

For additional information concerning sales by, and purchases from, suppliers (including information on resale certificates), see sections 117-305.3 and 117-305.4 below.

117-305.2 Medical Institutions

Medical institutions, such as hospitals, infirmaries, and nursing homes, may sell or provide meals and other foods in a variety of ways.

As part of the professional medical services provided, patients are furnished meals during their stay at the institution.

Meals and other foods are also sold to employees, visitors and others in cafeterias, canteens, and snack bars.

As with colleges and universities, medical institutions may contract with food service companies to sell or furnish meals at the hospital, infirmary, etc., either as agents or on some other basis.

Meals and Other Food Served to Patients as part of Medical Care

1. Sales to a medical institution of unprepared food products, for use in furnishing meals and other food to patients as part of their medical care, are retail sales subject to the sales tax or the use tax.

2. Sales to a food service company of unprepared food products, for use in furnishing meals and other food to patients as part of their medical care, are retail sales subject to the sales tax or the use tax if the food service company is the agent of the medical institution.

3. Sales by food service companies of meals to a medical institution, for use in furnishing meals and other food to patients as part of their medical care, are retail sales subject to the sales or the use tax if the food service company is merely under contract with the medical institution and is not the agent of the medical institution.

For additional information concerning sales by, and purchases from, suppliers (including information on resale certificates), see 117-305.3 and 117-305.4 below.

Meals and Other Food Served or Sold to Employees, Visitors and Others (Cafeterias, Canteens, Snack Bars, Etc.)

1. Sales by a medical institution of meals and other foods, other than those furnished to patients as part of their medical care, are retail sales subject to the sales or the use tax.

2. Sales of meals and other foods by a food service company as the agent of a medical institution, other than those furnished to patients as part of their medical care, are retail sales of the medical institution subject to the sales tax or the use tax.

3. Sales of meals and other foods by a food service company, other than those furnished to patients as part of their medical care, are retail sales of the food service company subject to the sales or the use tax.

For additional information concerning sales by, and purchases from, suppliers (including information on resale certificates), see 117-305.3 and 117-305.4 below.

117-305.3. Educational and Medical Institutions and Food Service Companies Making Both Retail Sales and Withdrawing for Use from the Same Stock of Goods

Educational and medical institutions and food service companies that are making both retail sales and withdrawing for use from the same stock of goods are to purchase at wholesale all of the goods so sold or used. They will then report retail sales based on gross proceeds of sales and withdrawals for use based on the property's fair market value. In order for this provision to apply, the educational or medical institution must have a substantial number of retail sales. To comply with this provision, educational and medical institutions should present to their suppliers a Form ST-8A - Resale Certificate. This will allow the suppliers to sell these goods at wholesale to the educational or medical institution.

117-305.4 Suppliers Selling Unprepared Food Products to Educational and Medical Institutions and to Food Service Companies

Educational and medical institutions and food service companies are purchasing unprepared food products at retail for use in preparing meals under a board plan. Therefore, businesses selling unprepared food products to these institutions and companies should sell such products at retail, unless the purchaser provides them a Form ST-8A - Resale Certificate. Receipt of the resale certificate will allow suppliers to sell these goods at wholesale, free of the tax, to these educational and medical institutions and food service companies.

Educational and medical institutions and food service companies should not provide their suppliers a resale certificate, Form ST-8A, unless they will be re-selling the product or are doing so to comply with the provisions of SC Regulation 117-324.

117-305.5 Exemption Meals Sold to School Children

Meals sold within school buildings, not for profit, to school children are exempted from the sales tax by Section 12-36-2120(10). This exemption is construed to include only sales of meals to pupils of kindergartens, grammar and high schools, either public or private, where it can be shown that there is no profit therefrom and where the sales are made within the school building. Schools operating school lunch programs are required to obtain a retail license and remit the tax on all sales of meals to persons other than school children.

Meals sold by any public or private educational institution or their agent, other than those exempted by Section 12-36-2120(10), described above, are subject to the sales tax when a separate charge per meal is made to the consumer. This includes cash sales, sales at special events and meals sold by commissaries at such institutions. Tax on these sales must be remitted by the institution to the department based on gross proceeds.

Educational institutions operating boarding facilities where meals and beverages are furnished without a separate charge being made or where a lump sum charge is made by the month or by the term are deemed to be the users or consumers of the prepared meals if same are purchased or acquired, or the users or consumers of the unprepared food products if such educational institutions or their agents purchase such products and prepare the meal. The seller of such prepared meals shall be required to report and remit the tax due on the gross proceeds of such prepared meals to the educational institution. The seller of unprepared food products to an educational institution or its agent purchasing such products and preparing the meals shall be required to report and remit the tax due on the gross proceeds of such raw foodstuffs.

Sales to consumers of prepared meals, foodstuffs or beverages on educational institution premises by an entity other than the educational institution or its agent, are sales at retail and the seller is required to obtain a retail license for each location, and report and remit the tax due on the gross proceeds of such sales.

238 FINAL REGULATIONS

Note: See Code Section 12-36-110 for the application of the tax to vending machine sales.

117-305.6 Meals Furnished Employees, Restaurants.

Meals served by employers to their employees as part of the latter's compensation are not taxable sales. Where, however, a separate charge is made for the same by the employer and either paid for by the employee or deducted from his wages, the transaction is a sale subject to tax.

117-305.7 Meals Served by Railroads, Airlines, Etc.

Sales of meals, drinks, etc., by railroads, airlines, pullman, steamships, or other transportation companies within this state are subject to the sales tax.

Meals, etc., served by such transportation companies as a part of the transportation service, for which no separate charge is made, are not required to be reported as retail sales by the companies. In such instances the companies are considered to be the consumers of the foods, etc., served and will be required to pay tax thereon to the suppliers.

117-305.8 Meals Served by Boarding Houses.

Food furnished by operators of boarding houses is not considered to be sold at retail when the charge for such food is a lump sum covering meals for a week or for a month when such food is not offered for sale to the general public. The supplier of foodstuffs is liable for the sales tax on sales to the operator at the time of the sale to him. The boarding house operator is considered to be the user of the materials he purchases.

Note, however, in instances where the boarding house operator is liable for the license and the tax under Section 12-36-920 he is liable for the tax measured by his gross proceeds of sales of meals plus gross proceeds derived from the rental or charges for rooms, lodgings, or accommodations furnished to transients. In this instance the properties which become a component of the meals prepared for sale are purchased at wholesale, tax-free. All other items of tangible personal property, such as heating and cooking fuels, furniture, linens, appliances, radios, and television sets are subject to the tax at the time of purchase by the boarding house operator.

117-306 Repairs

Materials used in repairing, for taxing purposes, fall into the following classes:

(a) Materials which pass to the repairman's customers and which do not lose their identity when used by the repairman and which are a substantial part of their repair job (such as auto repair parts, radio tubes, and condensers) are sold at retail by the repairman. He must report sales tax on such sales, including tax on the service incidental thereto. He may, however, if making separate agreements to sell the repair parts and to perform the labor and service required, remit tax only upon the price of the parts if his records and his invoices clearly show a separation of the amounts received from sales of parts and from the rendering of services.

(b) Materials which pass to the repairman's customer but which lose their identity when used by the repairman or which are inconsequential in amount; such as paint, solder, and tack; are considered to have been used or consumed by the repairman and are taxable at the time of sale to him.

(c) Materials which are used or consumed by the repairman and which do not pass on to his customer are supplies and taxable when sold to the repairman.

(d) Materials which fall in class (b) or (c) are purchased at wholesale for use by a repairman who, in addition to using such materials as a repairman, sells the same kinds of materials for use by others. These materials become

subject to the sales tax upon their withdrawal for use by the repairman. Note, however, that a repairman is not to be considered a vendor unless he carries a stock of goods and sells outright therefrom a substantial amount. If the repairman makes only isolated sales or "accommodation" sales, he is not to be licensed as a seller under the sales tax law, in which case his supplier is liable for the tax.

In all instances materials are taxable when sold to repairmen for use in making repairs where such materials lose their identity as a result of such use. For instance, solder used in welding, paint used in automobile refinishing, thread used in mending clothing, cloth used in reupholstering. In all instances where the shape or composition of the repair material is materially changed, such altered or changed material is considered to have been used or consumed by the repairman, and, for that reason, subject to tax when sold to him. No tax on this material is to be collected by the repairman from his customer.

In instances where repair materials and repair parts are passed to the repairman's customers without change, except necessary and customary minor adjustments, such parts or materials may be purchased at wholesale by the repairman licensed under the law. The repairman is then liable for sales tax on such sales of materials and parts to his customers.

117-306.1 Repairs to Machines.

- (a) When repairs to machines require only service or service with the use of an inconsequential amount of materials, the amount received is not subject to tax.
- (b) When material and service are used in making repairs to machines exempted under the machine exemption and when the materials used consist of standard replacement parts customarily used on such machines, neither service nor materials are subject to tax.
- (c) When material and service are used in repairing machines not exempted and when there is no separation in the billing, both materials and services are to be included in gross proceeds of sales.
- (d) When material and service are used in repairing taxable machines with service and materials shown separately, the material only is subject to the tax.
- (e) Materials are taxable in any event when sold to repairmen for use in making repairs where such materials lose their identity as a result of such use. For instance, paint, solder, lumber, and sheet metal.

117-306.2 Automobile Repair Shops.

Materials which pass to the repairman's customer and which do not lose their identity when used by the repairman and which are a substantial part of the repair job (such as automobile parts, accessories, tires, tubes and batteries) are sold at retail by the repairman. He must report sales tax on such sales, including tax on the service incidental thereto. He may, however, if making separate agreements to sell the repair parts and to perform the labor and services required, remit tax only upon the price of the parts if his records and his invoices clearly show a separation of the amounts received from sales of parts and from the rendering of services.

Materials which pass to the repairman's customer but which lose their identity when used by the repairman or which are inconsequential in amount (such as paint, solder and upholstery tacks) are considered to have been used or consumed by the repairman and are taxable at the time of sale to him.

The painting of automobiles is a service by the painter. Receipts from such painting are not taxable. The paint, supplies, etc., used or consumed by the painter are taxable when sold to him.

Materials which are used or consumed by the repairman and which do not pass on to his customer (such as tools, equipment, paint remover, upholstery cleaner and tire cleaner) are taxable when sold to the repairman.

240 FINAL REGULATIONS

117-306.3 Jewelry Repairmen.

The jewelry repairman is deemed to be engaged primarily in rendering services when he repairs property belonging to others. He is the purchaser for use or consumption of tangible personal property used by him in rendering such services. Consequently, the sales by the supply house to the jewelry repairman of articles of machinery and equipment and of such supplies as springs, crystals, jewel staffs, gold, silver solder and other materials used incident to the repair operation are sales at retail within the meaning of the sales and use tax law. Receipts of the jewelry repairman from watch, clock or other jewelry repair are not subject to the tax.

The sales of watches, clocks, watch bands, watch chains, and other items of jewelry or property of like nature constitutes sales of tangible personal property and as such bear the tax. The repairman making sales of such property is required to hold a retail license and to remit directly to the department the tax on such sales.

117-306.4 Shoe Repairmen.

The shoe repairman is deemed to be engaged primarily in rendering services when he repairs property belonging to others. He is the purchaser for use or consumption of tangible property used by him in rendering such services. Consequently, the sale to the shoe repairman of articles of machinery and equipment and such supplies as sole leather, rubber heels, thread, nails and other findings for use in connection with rendering such services are sales at retail within the meaning of the sales and use tax law.

The sale of shoe laces, second hand shoes, package products and other like property constitutes sales of tangible personal property and as such bear the tax. The repairman making sales of such property is required to hold a retail license and to remit directly to the department the tax on such sales.

117-307 Hotels, Motels, and Similar Facilities

Code Section 12-36-920 imposes a sales tax upon accommodations and "additional guest charges." The term 'additional guest charge' means an amount which is added to the guest's room charge for a specific amenity or service for the guest."

Therefore, charges for rooms, lodgings and accommodations are taxed at 7%, while other charges for other services provided at the hotel, when over and above the services customarily provided with the room, are taxed at 5% as an "additional guest charge." However, if an "additional guest charge" would be taxed under other provisions of the sales and use tax law (Chapter 36 of Title 12), then such charges are not taxed as an "additional guest charge."

It should therefore be noted that the determination as to what services, if any, are over and above the services customarily provided with the room must be based on all of the facts and circumstances.

The burden of proof that a charge is an additional guest charge, and not part of the price for the room, rests with the taxpayer. Failure to prove that a particular charge is for a service that is over and above the services customarily provided with the room will subject the charge to the 7% tax rate.

117-307.1 Examples of the Application of Tax to Various Charges Imposed by Hotels, Motels, and Other Facilities

The following questions and answers are intended to provide guidance with respect to the provisions of Code Section 12-36-920.

Telephone Charges

1.Q. If a hotel charges \$100.00 for a room, and that price includes the room and use of the phone for local calls, what tax rate applies to the \$100.00?

A. The \$100.00 charge would be subject to a tax rate of 7%. The use of the phone is a part of the services offered and provided with the room for the \$100.00. Therefore, it is not an additional guest charge.

2.Q. If a hotel charges \$80.00 per day for a room, and the customer is also charged \$5.00 per day for the availability of the phone for local calls, what tax rate applies to each of the charges?

A. The \$80.00 room charge and the \$5.00 telephone charge are taxed at 7%. The availability of a phone is a part of the services offered and provided with a room. The \$5.00 is charged whether or not the guest uses the phone. Therefore, it is not an additional guest charge when the charge is based on a per day rate.

3.Q. If a hotel charges \$80.00 per day for a room, and the customer is also charged \$1.00 per local phone call, what tax rate applies to each of the charges?

A. The \$80.00 room charge is taxed at 7%. Each \$1.00 phone charge is taxed at 5%. The availability of a phone is a part of the services offered and provided with a room; however, the use of the phone for a local call is over and above the services customarily provided with the room. Guests expect to pay a charge for each local call made from the room phone. Therefore, the \$1.00 is an additional guest charge when the charge is based on a per call basis.

4.Q. If a hotel charges \$80.00 for a room, and the customer is also charged \$20.00 for various long distance calls made, what tax rate applies to each of the charges?

A. The \$80.00 room charge is taxed at 7%, while the remaining charges for the long distance calls are taxed at 5% as additional guest charges. The Department, in Decision #92-11 held that the charges for long distance telephone calls were not otherwise taxed under Chapter 36 and were therefore taxable as additional guest charges.

Maid Service

5.Q. If a hotel charges \$100.00 for a room, and that price includes maid service, what tax rate applies to the \$100.00?

A. The \$100.00 charge would be subject to a tax rate of 7%. Since the maid service is a service provided with the room, it is not an additional guest charge.

6.Q. If a hotel charges \$80.00 for a room, and the customer also must pay a mandatory \$20.00 charge for maid service, which may or may not be separately stated, what tax rate applies to each of the charges?

A. The \$80.00 room charge and the \$20.00 maid service charge are taxed at 7%. The maid service is part of the services provided with the room. The fact that it may be separately charged does not necessarily make the charge an additional guest charge. In this case the maid service is mandatory, and therefore, the actual charge for the room is \$100.00 which is taxed at 7%.

7.Q. If a rental agency charges \$800.00 per week for a condominium unit, and the customer also must pay a mandatory \$50.00 charge for maid service at the end of the week, what tax rate applies to each of the charges?

A. The \$800.00 weekly unit charge and the \$50.00 maid service charge are taxed at 7%. The maid service is part of the services provided with the unit. The fact that it may be separately charged does not necessarily make the charge an additional guest charge. The maid service is mandatory, and therefore, the actual charge for the unit is \$850.00, which is taxed at 7%.

242 FINAL REGULATIONS

8.Q. If a rental agency charges \$800.00 per week for a condominium unit, and the customer is required to leave the unit in a clean condition, what tax rate applies to each of the charges if the customer has the option to have the rental agency clean the unit at the end of the week for \$50.00?

A. The \$800.00 weekly unit charge is taxed at 7% and the \$50.00 maid service charge is taxed at 5%. The \$50.00 optional maid service is provided over and above the services provided with the unit. The \$50.00 is therefore an additional guest charge subject to the tax at 5%.

9.Q. If a rental agency charges \$800.00 per week for a condominium unit, a mandatory \$50.00 charge for maid service at the end of the week, and the customer has the option to receive daily maid service for \$20.00 a day, what tax rate applies to each of the charges?

A. The \$800.00 weekly unit charge and the \$50.00 maid service charge are taxed at 7%. The maid service is part of the services provided with the unit. The maid service is mandatory, and therefore, the actual charge for the unit is \$850.00, which is taxed at 7%. The \$20.00 optional maid service is provided over and above the services provided with the unit. The \$20.00 is therefore an additional guest charge subject to the tax at 5%.

In-room Movies

10.Q. If a hotel charges \$100.00 for a room, and that price includes the in-room movies at no extra charge, what tax rate applies to the \$100.00?

A. The \$100.00 charge would be subject to a tax rate of 7%. The availability of in-room movies is a part of the services offered and provided with the room for the \$100.00. Therefore, it is not an additional guest charge.

11.Q. If a hotel charges \$80.00 per day for a room, and the customer is also charged a mandatory fee of \$5.00 per day for in-room movies (whether or not the guest watches any movies), what tax rate applies to each of the charges?

A. The \$80.00 room charge and the mandatory \$5.00 in-room movie charge are taxed at 7%. The availability of in-room movies is a part of the services offered and provided with a room. The \$5.00 is charged whether or not the guest watches the movies. Therefore, it is not an additional guest charge when the charge is based on a per day rate and the guest is charged whether or not the movies are watched.

12.Q. If a hotel charges \$80.00 per day for a room, and the customer is also charged \$7.00 for each in-room movie he watched, what tax rate applies to each of the charges?

A. The \$80.00 room charge is taxed at 7%. The \$7.00 movie charge is taxed at 5%. The availability of in-room movies is a part of the services offered and provided with a room; however, the charge for viewing a movie is over and above the customary charge for the room. Guests expect to pay a charge for each movie viewed. Therefore, the \$7.00 is an additional guest charge when the charge is based on a separate charge for watching the movie. The tax on this additional guest charge is the liability of the hotel, regardless of whether or not service is being provided by a third party or the hotel itself.

Meals

13.Q. If a hotel charges \$100.00 for a room, and that price includes a continental breakfast for the guest, what tax rate applies to the \$100.00?

A. The \$100.00 charge is taxed at 7%. Since the continental breakfast is provided with the room, it is not an additional guest charge. (The withdrawal of the food from the hotel's inventory is subject to the sales tax based on its fair market value. See Code Section 12-36-90 and Code Section 12-36-110.)

14.Q. If a hotel charges \$100.00 for a room, and also charges the guest a separately stated \$20.00 "club" fee, what tax rate applies to each of the charges? (The "club" fee, for that extra \$20.00, provides the guest access to a buffet meal that is not available to other guests.)

A. The Department, in Decision #92-32, held that the separately stated charge of \$20.00 was not part of the charge for the room but a retail sale of the meal to the guest. Therefore, the charges are taxed as follows: 7% tax applies to the \$100.00 charge for the room and 5% tax applies to the \$20.00 charge for the meal. The meal is not taxed as an additional guest charge under Code Section 12-36-920(B) since it is otherwise taxed at 5% under Chapter 36 - Code Section 12-36-910.

Linens

15.Q. If a rental agency charges \$800.00 per week for a condominium unit, and the customer has the option to rent linens for \$50.00 for the week, what tax rate applies to each of the charges?

A. The \$800.00 weekly unit charge is taxed at 7%. The rental of the linens is optional and not part of the services provided with the unit for the \$800.00 charge. The \$50.00 rental of the linens is not an additional guest charge since the rental charge for the linens is a sale of tangible personal property and is otherwise taxed at 5% under Chapter 36 - Code Section 12-36-910.

Golf and Other Tourist Packages

16.Q. If a hotel has a "golf package" for \$100.00 per night, and the customer is entitled to a room at the hotel, one round of golf at a golf course at no extra charge, and a meal at no extra charge, what tax rate applies?

A. The \$100 charge would be subject to the 7% tax, except any portion forwarded to the golf course for payment of the green fee and any portion forwarded to the restaurant for payment of the meal. However, see the one exception in the "Note " in Example #1.

The following examples best explain this answer:

Example #1: The hotel receives \$100 from the guest for the golf package. The hotel pays the golf course \$30 for the guest's green fee and pays the restaurant \$5 for the guest's meal.

The hotel would be liable for the 7% tax on \$65 (\$100 - \$35). The golf course would be liable for the 5% admissions tax on \$30 and the restaurant would be liable for 5% sales tax on the sale of the meal. This calculation must be made on a guest by guest basis. In other words, the 7% tax due will be determined for each guest by multiplying 7% by the total charge for the package less the portion forwarded to the golf course for payment of the green fee and the portion forwarded to the restaurant for payment of the meal.

Note: If the hotel's guest is unable to play golf that day ("No-Show ") (but still received the meal), and under terms of the golf package the guest will not be required to pay the "green fee portion" of the package, the hotel would be liable for the 7% tax on the amount it received from the guest less the amount paid by the hotel to the restaurant. For example, if the hotel determined that the "green fee portion" of the \$100 package was \$30 and required the guest to only pay \$70 for that day, then the hotel would be liable for the 7% tax on \$65 and the restaurant would be liable the 5% sales tax on the sale of meal.

If the hotel's guest is unable to play golf that day ("No-Show") (but still received the meal), and under terms of the golf package the guest must still pay the hotel the full \$100, the hotel would be liable for the 7% tax on the "accommodations portion" of the package. The golf course would not be liable for the 5% admissions tax since the guest did not play golf and the golf course did not receive an admissions fee from the hotel. However, the hotel is liable for the 5% tax on the other portion of the \$100 paid by the guest since it now represents an additional guest charge for the service of making the golf arrangements that were not used. This additional guest charge will

244 FINAL REGULATIONS

be equal to the green fee that the hotel would have had to pay to the golf course. In other words, if the hotel would have been required to pay \$30 had the guest played golf, then the additional guest charge would be \$30. As such, the hotel would be liable for the 7% tax on \$65 and the 5% tax (as an additional guest charge for the service) on \$30 and the restaurant would be liable for the 5% sales tax on the sale of the meal.

Example #2: The hotel receives \$100 from the guest for the golf package. The hotel pays the restaurant \$5 for the guest's meal. The hotel has an agreement with the golf course to pay the golf course \$30 for the guest's green fee. When a guest does play golf, the hotel pays the \$30; however, the hotel will receive money back from the golf course at a later date to help pay for the hotel's advertisements of its golf packages.

The hotel would be liable for the 7% tax on \$65 (\$100 - \$35). The golf course would be liable for the 5% admissions tax on \$30 and the restaurant would be liable for the 5% sales tax on the sale of the meal. The fact that the hotel will receive a portion of the money back in the future does not affect the taxation of the charges. It is merely an expense of the golf course that is paid to the hotel.

Notes: 1. To ensure the 7% tax is not circumvented by sending most of the package charge to the golf course and then later having a large portion of it returned to the hotel as "advertising," the amount paid to the golf course and returned to the hotel to pay for advertising must be reasonable and supported by the books and records of both taxpayers. Otherwise, the Department will assess taxes according to a reasonable breakdown of room charges, green fees, and meal charges.

2. Other tourist packages, such as tennis, honeymoon, and entertainment packages, handled in a similar manner would be taxed in the manner described above for golf packages.

Bike Rentals

17.Q. If a hotel charges \$100.00 per night for a room, and the customer has the option to rent a bike to travel around the resort area for \$10.00 a day, what tax rate applies to each of the charges?

A. The \$100.00 hotel charge is taxed at 7%. The rental of the bike is optional and not part of the services provided with the room for the \$100.00 charge. The \$10.00 is not an additional guest charge since the rental charge for the bike is a sale of tangible personal property and is otherwise taxed at 5% under Chapter 36.

18.Q. If a hotel charges \$100.00 per night for a room, and the hotel allows the guest to reserve a bike at no extra charge to travel around the resort, what tax rate applies to the charge?

A. The \$100.00 hotel charge is taxed at 7%. The availability of the bike is a part of the services provided with the room for the \$100.00 charge and is therefore not an additional guest charge.

Newspapers

19.Q. If a hotel charges \$80.00 for a room, and the guest receives a newspaper that is delivered to the guest's door in the morning, what tax rate applies to the charge?

A. The \$80.00 room charge is taxed at 7%. The newspaper is not an additional guest charge since the newspaper is part of the services provided with the room for the \$80.00 charge.

20.Q. If a hotel charges \$80.00 for a room, and the customer is charged \$2.00 for a newspaper that is delivered at the guest's request, what tax rate applies to each of the charges?

A. The \$80.00 room charge is taxed at 7%, while the charge for the newspaper, as an additional guest charge, is taxed at 5%. The newspaper that is provided for \$2.00 is over and above the services customarily provided with the room at the hotel.

Valet Parking

21.Q. If a hotel charges \$80.00 for a room, and there is no additional charge to the customer for valet parking, what tax rate applies to the charge?

A. The \$80.00 room charge is taxed at 7%.

22.Q. If a hotel charges \$80.00 for a room, and the customer is also charged \$15.00 for valet parking, what tax rate applies to each of the charges?

A. The \$80.00 room charge is taxed at 7%, while the \$15.00 charge for the valet parking, as an additional guest charge, is taxed at 5%.

23.Q. If a person is not a guest at a hotel, but is attending an event at the hotel, is a \$15.00 charge for valet parking subject to the tax as an additional guest charge?

A. The \$15.00 charge for valet parking is not subject to the sales tax. It is not an additional guest charge since, in order to be taxable, the charge must be in addition to a room rental charge. This charge is not in addition to another charge.

Meeting Rooms

24.Q. If a hotel charges \$80.00 for a guest room, and there is no additional charge to the customer for the use of a meeting room, what tax rate applies to the charge?

A. The \$80.00 guest room charge is taxed at 7%.

25.Q. If a hotel charges \$80.00 for a guest room, and the customer is also charged \$35.00 for the use of a meeting room, what tax rate applies to each of the charges?

A. The \$80.00 guest room charge is taxed at 7%, while the \$35.00 charge for the meeting room, as an additional guest charge, is taxed at 5%.

26.Q. Is a \$35.00 charge for the use of the meeting room by a person who is not a guest at the hotel, subject to the tax as an additional guest charge?

A. The \$35.00 charge for the meeting room is not subject to the sales tax. It is not an additional guest charge since, in order to be taxable, the charge must be in addition to a room rental charge. This charge is not in addition to another charge.

Note: If the meeting room is being rented by an organization that is conducting a seminar, workshop, conference, or similar meeting at the hotel, the charge for the meeting room is taxed at 5% as an additional guest charge if the organization is also renting guest rooms at the hotel for officers or members of the organization, invited speakers, or others.

Other Services

27.Q. If a hotel charges \$100.00 for a room, and the room contains a refreshment bar so the guest may avail himself of alcoholic drinks, non-alcoholic drinks, or snacks at no extra cost, what tax rate applies to the \$100.00?

A. The \$100.00 room charge is taxed at 7%.

246 FINAL REGULATIONS

28.Q. If a hotel charges \$80.00 for a room, and the room contains a refreshment bar so the guest may avail himself of alcoholic drinks, non-alcoholic drinks, or snacks at a set price per item, what tax rate applies to each of the charges?

A. The \$80.00 room charge is taxed at 7%, while the charges for each item the guest consumes from the refreshment bar is taxed at a rate of 5% as a sale of tangible personal property under Code Section 12-36-910. These charges are not additional guest charges since they are "otherwise taxed" under Chapter 36.

Cancellations

29.Q. If a person reserves and pays for sleeping accommodations at a hotel, but does not cancel the reservation or does not cancel the reservation by the prescribed time set by the hotel, is the charge for the accommodations retained by the hotel subject to the tax even though he will not use the sleeping accommodations?

A. While the sleeping accommodations were not used, the person had the right to use such sleeping accommodations. Therefore, the sleeping accommodations were "furnished" and the charge by the hotel for such sleeping accommodations is subject to the tax. See Question #30 for information concerning when accommodations are canceled but an administrative fee or deposit is charged or retained.

30.Q. If a person makes reservations with a hotel for sleeping accommodations, but the reservations are canceled by such person or by the hotel, is an administrative fee or deposit charged or retained by the hotel as a result of the cancellation subject to the tax?

A. An administrative fee or deposit retained or charged by a hotel when reservations for sleeping accommodations are canceled is not subject to the sales tax.

Note: See Question #29 for information concerning when accommodations are canceled or otherwise not used but a charge for the sleeping accommodations is made or retained by the hotel. See also Question #16, Example #1 Note, for the taxation of a tourist package when sleeping accommodations are furnished but the guest does not use a portion of the package (i.e. the guest pays for a golf package but does not play golf).

Note: This regulation references tax rates of 7% for the sales tax on accommodations, 5% for the sales tax on additional guest charges, and 5% for the sales tax on sales or rentals of tangible personal property. Counties may now impose several types of local option sales and use taxes as well as other local taxes imposed upon the furnishing of accommodations and the sale of prepared meals. Some of these taxes are collected by the Department of Revenue on behalf of the county imposing the tax and others are collected by the county itself.

117-307.2 Purchases by Hotels, Motels and Other Facilities

Hotels, lodging houses, apartment houses, tourist camps and the like are subject to the sales or use tax, whichever may apply at the time of purchase for use or consumption of beds, bedding, carpets, shades, curtains, linens, uniforms, supplies, fuel for heating and cooking, air conditioning equipment, etc.

117-307.3 Certain Facilities Not Subject to the Tax

The tax also applies to the gross proceeds from the rental or charges for any rooms, lodgings or accommodations furnished to transients by any hotel, inn, tourists court, motel, residence, or any place in which rooms, lodgings or accommodations are furnished to transients for a consideration, except where such facilities consist of less than six sleeping rooms, contained on the same premises, which is used as the place of abode of the owner or operator of such facilities. The gross proceeds derived from the lease or rental of accommodations supplied to the same person for a period of 90 continuous days shall not be considered proceeds from transient.

117-307.4 Rentals in Excess of Ninety Days Not Subject to the Tax - Airlines, Bus Companies, Etc.

A business, usually an airline, bus company or railroad, will reserve a certain number of rooms in a hotel for use by its personnel. Usually the hotel is guaranteed a certain minimum occupancy. The hotel is paid for the number of rooms that are occupied and would not necessarily furnish the same rooms each time. Such proceeds derived from the rentals of the accommodations supplied would be subject to the sales tax.

A business rents from a hotel certain specific rooms on a continuing basis. These rooms are occupied by authorized personnel of the corporation, on a daily basis. The hotel is paid for the specific number of rooms that are rented, whether they are used or not.

Transactions of this nature would not be subject to the tax if the contract remains in force for a time in excess of 90 continuous days.

117-307.5 Certain Exchanges of Accommodations Exempt from the Tax

Code Section 12-36-2120(31) exempts from the sales tax on accommodations the gross proceeds accruing or proceeding from "vacation time sharing plans, vacation multiple ownership interests, and exchanges of interests in vacation time sharing plans and vacation multiple ownership interests as provided by Chapter 32 of Title 27, and any other exchange of accommodations in which the accommodations to be exchanged are the primary consideration."

117-307.6 Accommodations Furnished to the Federal Government or Federal Government Employees

Charges for hotel and motel accommodations to a federal employee on official government business are exempt from sales tax pursuant to Code Section 12-36-2120 if the accommodations are purchased directly by the federal government.

Therefore, the 7% sales tax on accommodations is not applicable when:

1. The federal government is billed directly by the retailer;
2. The federal employee pays by government check; or,
3. The federal employee pays by government credit card and the federal government is billed directly by the credit card company.

Charges for hotel and motel accommodations to a federal employee on official government business are subject to the sales tax if the accommodations are purchased by the federal employee, even if the employee is reimbursed for the charges. This includes transactions in which:

1. The federal employee pays by personal check; or,
2. The federal employee pays by credit card, is billed directly by the credit card company, and is reimbursed by the federal government.

NOTE: The presentation by a federal employee of a tax exemption certificate issued by the federal government is not sufficient to exempt the transaction from the tax. In order to be tax exempt, a transaction involving a tax exemption certificate must also meet one of the above requirements.

117-308 Professional, Personal, and Other Services

248 FINAL REGULATIONS

The receipts from services, when the services are the true object of the transaction, are not subject to the sales and use tax, unless the sales and use tax is specifically imposed by statute on such services (i.e accommodation services, communication services). The following subsections of this regulation will discuss various types of services. It should also be noted that several businesses, in addition to selling nontaxable services, also sell tangible personal property and should be licensed to report the tax.

This list is not all-inclusive as to services offered in South Carolina, as to services offered by a particular profession, or as to sales made by a particular profession.

117-308.1 Professional Services

Receipts from the performance of professional services are not subject to the sales tax.

The property used incidental to the performance of such services by licensed medical doctors, dentists, doctors of veterinary medicine, oculists, optometrists, lawyers, accountants, civil engineers, and other licensed professional men is subject to tax on its sale to such persons.

Note however, that a doctor, etc., may in addition to rendering a service, also be in the business of making sales of tangible personal property. For instance, a doctor may sell medicines.

In those cases where professional men are regularly engaged in the business of selling tangible personal property at retail, they must obtain a retail license and remit the taxes due on such sales.

117-308.2 Dentists.

Dentists use and consume equipment, supplies, and medicines in rendering professional service, which equipment, supplies and medicines, etc., are taxable at the time of its purchase by the dentists. Note: Sales of dental prosthetic devices to dentists are exempt from the tax.

117-308.3 Doctors.

Doctors are the consumers of the supplies, medicines, office furniture and fixtures and special tools and equipment they use in the practice of their profession. Sales of such supplies and equipment to doctors are retail sales and subject to the sales tax.

It is only when a doctor has a stock of drugs from which he makes numerous and substantial retail sales that he is required to have a retail license and to remit sales tax directly to the department.

117-308.4 Lawyers.

Lawyers use law books, supplies, and equipment, which books, supplies and equipment are taxable.

117-308.5 Veterinarians.

Veterinarians are deemed to be the users or consumers of the property they purchase, whether used in the rendering of professional services or sold outright as part of the veterinarian practice and not furnished as a part of professional services rendered.

117-308.6 Architects.

Architects are not considered to be engaged in the business of selling tangible personal property when they render professional services in the forming of original plans, designs and specifications. Also considered to be proceeds from the rendition of professional services are charges for the sale of these original design concepts which have

been changed as a result of elevation and/or other architectural modifications to a customer's specific requirements.

Sales by architects of all reproductions of such plans, designs or specifications, unaltered or unmodified in any way, are deemed to be subject to the sales or use tax.

117-308.7 Ophthalmologists, Oculists and Optometrists.

Ophthalmologists, oculists and optometrists are engaged primarily in rendering professional services and when they furnish, replace, or repair eye glasses, lenses or other such ophthalmic materials for their patients in connection with their services, the gross receipts from such services are not taxable, but they must pay the tax as consumers to their suppliers on all materials purchased by them for use in the performance of such service.

The optician is the maker and seller of eyeglasses. He does not examine eyes, but merely fills prescriptions supplied by the ophthalmologist, oculist or optometrist and must charge the tax on all sales by him to users or consumers. The optician is required to obtain a retail license and collect and remit the tax on the gross proceeds of such sales.

All persons or companies, whether opticians, optometrists, or otherwise, making sales of such property as sun glasses, barometers, telescopes, binoculars, opera glasses, etc., are required to have a retail license and collect the sales tax upon the sales of such items of merchandise to the consumer or user thereof.

Likewise, ophthalmologists, oculists and optometrists who are also opticians must pay a tax based on the reasonable and fair market value of all tangible personal property withdrawn for use by them in filling their own prescriptions.

The term "reasonable and fair market value" is held to mean the retail sales price at which the property is offered for sale to the public in the absence of affirmative proof of the contrary. In no event can it be less than the cost of materials used, to include fabrication and service labor, and all other expenses which are a part of preparing the property for the patient, except that it shall not include charges for professional services in connection with examining the patient.

117-308.8 Hospitals, Infirmaries, Sanitariums, Nursing Homes and like Institutions

Hospitals, infirmaries, sanitariums, nursing homes and like institutions are engaged primarily in the business of rendering services. They are not liable for the sales tax with respect to their gross proceeds or receipts from meals, bandages, dressings, drugs, x-ray photographs and other tangible personal property where such property is used in the rendering of the primary medical service to patients. This is true irrespective of whether or not such tangible items are billed separately to their patients. Hospitals, infirmaries, sanitariums, nursing homes and like institutions are deemed to be the users or consumers of such tangible personal property and the instate sellers of these items are required to report and remit the tax due on the sale of such property to the hospitals, infirmaries, sanitariums, nursing homes, and like institutions or in the case of out-of-state purchases, use tax shall be reported and remitted by the purchaser.

Where meals and beverages are furnished by hospitals, infirmaries, sanitariums, nursing homes and like institutions to the patient as a part of their primary medical service, with or without a separate charge being made, the hospitals, infirmaries, sanitariums, nursing homes and like institutions are deemed to be the users or consumers of the prepared meal if same is purchased or acquired or the users or consumers of the unprepared food products if the hospitals, infirmaries, sanitariums, nursing homes and like institutions purchase such products and prepare the meal.

Sales of meals, foodstuffs or beverages by hospitals, infirmaries, sanitariums, nursing homes or like institutions to members of the staff, nurses, attendants, employees, visitors or patients, other than those meals furnished as a

250 FINAL REGULATIONS

part of the primary medical service rendered, are sales at retail and such institution is required to obtain a retail license for each location and report and remit the sales tax on the gross proceeds of such sales, to include sales for cash, credit, payroll deduction and sales at special event functions. This includes sales made in institutions, cafeterias, snack bars, canteens and commissaries.

Where drugs, prosthetic devices and other supplies are furnished to their patients as a part of the medical service rendered, such hospitals, infirmaries, sanitariums, nursing homes and like institutions are deemed to be users or consumers of such drugs, prosthetic devices and other supplies.

Gases such as oxygen, etc., sold to hospitals, medical doctors, dentists, and others for professional use are subject to the sales or use tax, whichever may apply.

117-308.9 Advertising Agencies.

Advertising agencies are engaged primarily in the business of selling services. These rely on expertise in advertising strategy, in media buying, in graphic arts production and in other specialized fields to secure and retain clients.

These companies purchase and/or produce finished advertising materials such as radio and television spots and newspaper, magazine and billboard ads, and contract with local and network radio and television stations, newspaper and magazine publishers, outdoor advertising companies, transit advertising companies (bus, taxi and airline) and other media for time or space to air or display these programs.

In the development and execution of a complete advertising campaign, advertising agencies may also share responsibilities with clients in the development of products or services to include, as an example, creation of a trademark, determination of a price, selection or creation of channels of distribution of the products and/or dealership and appraisal of competition.

Receipts of advertising agencies from the furnishing of these professional services are not subject to the sales or use tax. The tax is due, however, on all tangible personal property purchased by these agencies for use in the performance of such services irrespective of whether such property is acquired in the name and for the account of the advertising agencies or their respective principals.

117-308.10 Bookbinders and Paper Cutters.

Persons engaged in the business of binding books, magazines or other printed matter belonging to another, render nontaxable services. Sales of equipment, materials and supplies to bookbinders for use in performing such services are taxable.

If a bookbinder binds his own printed matter and sells the finished products to users or consumers, or makes and sells at retail loose-leaf binders or other articles, he must remit the tax on the entire receipts from such sales.

A person engaging in the business of paper-cutting, folding, gathering, padding or punching circulars, office forms or other printed matter belonging to others, renders nontaxable services. Sales of tangible personal property to such persons for use or consumption in the performance of these services are taxable.

Materials used by bookbinders in repairing textbooks are subject to the tax.

117-308.11 Jewelry Repairmen.

The jewelry repairmen is deemed to be engaged primarily in rendering services when he repairs property belonging to others. He is the purchaser for use or consumption of tangible personal property used by him in rendering such services. Consequently, the sales by the supply house to the jewelry repairman of articles of

machinery and equipment and of such supplies as springs, crystals, jewel staffs, gold, silver solder and other materials used incident to the repair operation are sales at retail within the meaning of the law. Receipts of the jewelry repairman from watch, clock or other jewelry repair are not subject to the tax.

The sales of watches, clocks, watch bands, watch chains, and other items of jewelry or property of like nature constitutes sales of tangible personal property and as such bear the tax. The repairman making sales of such property is required to hold a retail license and to remit directly to the department the sales tax on such sales.

117-308.12 Shoe Repairmen.

The shoe repairman is deemed to be engaged primarily in rendering services when he repairs property belonging to others. He is the purchaser for use or consumption of tangible property used by him in rendering such services. Consequently, the sale to the shoe repairman of articles of machinery and equipment and such supplies as sole leather, rubber heels, thread, nails and other findings for use in connection with rendering such services are sales at retail within the meaning of the law.

The sale of shoe laces, second-hand shoes, package products and other like property constitutes sales of tangible personal property and as such bear the tax. The repairman making sales of such property is required to hold a retail license and to remit directly to the department the sales tax on such sales.

117-308.13 Barber and Beauty Shops.

Barber and beauty shop operators primarily render personal services. They are the purchasers for use or consumption of such tangible personal property as is used or consumed incidentally in the rendering of such personal service.

Barber and beauty shops are not, however, relieved from collecting and reporting the tax on sales of tangible personal property, for use or consumption, such as package cosmetics, hair tonics, lotions, and like articles, when sold apart from the rendering of personal services to the purchasers thereof.

117-308.14 Taxidermists

Persons practicing the art of taxidermy are deemed to be performing a service the receipts from which are not subject to the sales or use tax. A tax is due, however, on all purchases of tangible personal property for use in the performance of such services.

117-308.15 Automobile Painters

The painting of automobiles is a service by the painter. Receipts from such painting are not taxable. The paint, supplies, etc., used or consumed by the painter are taxable when sold to him.

117-308.16 Painters.

Persons doing any kind of painting where the only tangible personal property supplied by them is the paint which they apply, are primarily rendering a service and not making retail sales. The receipts from such painting are not subject to the sales tax. All of the paint, tools, brushes, equipment, and supplies purchased by painters are subject to the sales tax or use tax, whichever applies, at the time of sale to the painter.

Note, however, that where painters sell painted signs, furniture, or articles which they have manufactured or purchased for painting for resale purposes, such painters are selling such manufactured or processed articles, which sales are subject to the sales tax. The paint and other materials used as a component part of articles to be sold are purchased tax free at wholesale.

252 FINAL REGULATIONS

Where painters are both consuming paints, etc., in rendering services and consuming from the same stock the same kind of property in producing property for sale, and where the use in production is continuous and a substantial part of the total business, and where suitable records are kept revealing costs of all materials used in contract painting, and costs of materials used in producing for sale, the painter using the materials for both purposes will be allowed to purchase all of the dual purpose materials at wholesale, tax-free, and pay sales tax on the basis of gross receipts from property sold at retail, plus the total cost of all materials used, consumed, or furnished by him in his contract painting business.

Where the painter is in such a dual business and his records are not kept to reveal his sales and the cost of property used in contract painting, he shall be required to pay sales or use tax on all his purchases and in addition will be required to report and pay sales tax on all of his sales of property at retail.

Such consumable supplies as brushes, thinners, paint remover, tools, sandpaper, etc., are, in any event, taxable when purchased by the painter.

117-309 Retailers

The following addresses the application of the sales and use tax to the transactions of some retailers. The list of retailers is not all inclusive and the types of transactions discussed for each retailer are not all inclusive. In addition to selling tangible personal property, some of these retailers may also provide services, some of which are sold in conjunction with tangible personal property and other which are not sold in conjunction with tangible personal property.

117-309.1 Florists

Where florists sell through telegraphic delivery association the following rules will apply:

1. On all orders taken by a South Carolina florist and telegraphed to a second florist in South Carolina for delivery in this state, the sending florist will be held liable for the sales tax measured by his receipts from the total amounts collected from the customer.
2. In cases where a South Carolina florist receives an order pursuant to which he gives telegraphic instructions to a second florist located outside South Carolina for delivery of flowers to a point outside South Carolina, tax will likewise be owing with respect to the total receipts of the sending florist from the customer who placed the order.
3. In cases where a South Carolina florist receives telegraphic instructions from other florists located either within or outside of South Carolina for the delivery of flowers, the receiving florist will not be held liable for tax with respect to any receipts which he may realize from the transaction. In this instance, if the order originated in South Carolina, the tax will be payable by the South Carolina florist who first received the order and gave the telegraphic instructions to the second florist.

117-309.2 Photographers, Photo Finishers, and Photo Copiers

Photographers operating photographic studios for the purpose of taking photographs and portraits are primarily engaged in the business of selling tangible personal property to their customers and such sales are taxable.

In cases where individuals deliver pictures to photographers or photographic studios for tinting or coloring, the receipts from such tinting or coloring would not be subject to tax, since such a charge would be the result of service rendered.

Where individuals deliver to what are commonly known as photo finishers, films for developing by the latter, the charge made by photo finishers for actual developing of the films is compensation for a service and does not

represent receipts from the sale of tangible personal property. If, however, the photo finisher supplies or sells to his customer, for whom he may be developing the film, printed pictures, the charge for such prints or pictures would constitute a sale at retail, which would be taxable. In such cases, if the photo finisher does not segregate the charge for developing of the films from the charge for prints or pictures, the total amount of the charge to the customer would be taxable. Photostatic copies produced and sold by a photostat producer to purchasers for use, and not for purpose of resale, constitute sales of tangible personal property at retail and are taxable.

117-309.3 Printers

Printers are engaged in the business of producing tangible personal property and their sales of printed matter such as catalogues, books, letterheads, bills, envelopes, folders, advertising circulars, and the like, to purchasers who use or consume these articles are sales at retail. A printer may not deduct from the selling price of such tangible personal property charges for the labor or service of performing the printing even though such labor or service charges may be billed to the customer separately from the charge for the stock. Such labor or service is embodied in and becomes a part of the tangible personal property sold. Where printers purchase from the United States Post Office, cards and envelopes stamped for postage, and imprint thereon various legends for customers, the printers must pay the tax measured by their gross proceeds of the sale of the printed cards or envelopes to their customers. Such cards and envelopes constitute tangible personal property and if they are not resold by such customers, the sales by the printers are at retail. Such printers are entitled to deduct the amount of the postage from the selling price.

No tax arises from the service of imprinting or from the service of typesetting performed by the printer for another printer, where title to the metal does not pass to the customer.

Gross receipts accruing from the sales of printed matter of all kinds are subject to the tax, except as otherwise specifically provided.

Sales of materials to printers are at wholesale, tax-free, when such materials become a component of the printed matter produced for sale. Where the printer qualifies as a manufacturer or processor he is entitled to purchase free of the tax the machines used in printing. Supplies, materials, and equipment not becoming a component of the product to be sold or not constituting a machine used in manufacturing are subject to the sales or use tax, whichever may apply.

117-309.4 Artists

Artists engaged in the business of designing, sketching, engraving, drawing or painting upon paper, canvas, wood or other materials and selling such designs, sketches, engraving, drawings or paintings to purchasers for use or consumption and not for resale, are in the business of selling tangible personal property at retail and are required to pay the tax upon the total amount of the receipts from such sales.

The tax is payable on the total selling price of the finished product and no division of the selling price may be made so that the tax would be payable only on the materials consumed. A completed painting is tangible personal property as is, for example, a valuable vase. In the same category is a completed design sketch, engraving or drawing made or designed by artists.

117-309.5 Sellers of Custom-made Items

Where persons contract to manufacture, compound, process, or fabricate their materials into articles of tangible personal property according to the special order of their customers, the total receipts from the sales of such articles are subject to the sales or use tax, whichever may apply. The seller may not deduct any of his costs, nor can he deduct any of his charges for labor or services, which are an item of the production or fabrication cost of the articles, to arrive at the taxable amount. Articles commonly made to order are portieres, curtains, draperies, tents, awnings, clothing, convertible tops, seat covers, and slip covers.

254 FINAL REGULATIONS

Persons making sales of made-to-order and custom-made articles purchase the materials which become a component or ingredient of their products at wholesale, tax-free. The equipment, tools, and supplies used or consumed in the production of such articles, and not becoming a part thereof, are subject to the tax.

117-309.6 Machine Shops

Property manufactured or fabricated by machine shops and custom foundries is subject to the sales tax, except when sold for resale purposes or when exempted by one of the exemptions found in the sales and use tax law.

In doing repair work, the machine shop operator consumes the materials which lose their identity in the repairing process, such as paint, solder, babbitt and lumber. He is also considered to be the consumer of such items as cotter keys, nails, washers, stove bolts and nuts, bits of metal, and sheets of metal used in patching or reinforcing. The receipts from the use of these materials are not subject to the sales and use tax. The sales or use tax is due by the machinist at the time of purchase from his suppliers.

Where the machinist in making repairs, fabricates or manufactures a recognizable part or attachment for the article being repaired (as contrasted to patching, mending, or reinforcing weakened parts) no deduction is permissible for labor or any other expenses which are a part of fabricating or manufacturing the part or attachment. He may, however, if making separate agreements to sell the manufactured or fabricated part and to install same, remit tax only on the sales price of the fabricated part or attachment, provided his books and invoices show clearly a separation between the sales price of the fabricated part or attachment and the labor and service of installation.

117-309.7 Ship Chandlers

Ship chandlers sell marine supplies to operators of all kinds of watercraft and to others. The sale or sales by ship chandlers of fuel, lubricants and supplies for use aboard ships plying on the high seas engaged in trade or commerce between South Carolina ports and ports of other states and foreign countries are not subject to the tax. All other sales made by ship chandlers, not for resale, are taxable with the exception of tangible personal property delivered to a ship from a bonded warehouse in the custody and under supervision of the United States customs officials, who deliver such properties aboard ships to a locked compartment on which a custom seal is placed, which seal by federal rule cannot be broken until the vessel has passed the 12 mile limit.

117-309.8 Undertakers

Caskets, grave vaults, shrouds, and other tangible personal property furnished by undertakers and funeral directors in rendering burial services are sold by them at retail. These sales are subject to the sales tax.

Where there is a separation of services from the sale of tangible personal property in invoices rendered, and where receipts from sales and receipts from services are properly identified on the books and records of the undertaker, the sales tax will not apply to receipts accruing from the rendering of such services as embalming, hearse service, transportation of family, etc.

In complying with the provision for the separation of charges, a detailed itemization is not required. A separation, listing items such as caskets, vaults, embalming, hearses, and other expenses, without indicating the amount of each item, but indicating the total amount of the charge, and then indicating the amount of the sales tax would be in compliance with the department's determination, if the invoice also contains a statement evidencing the separation of the charges. As an example, if the sale of the tangible personal property amounts to 50 percent of the total charge, then a statement may be shown on the invoice such as: "For purposes of calculating the South Carolina sales tax, 50 percent of the above charge is determined to be subject to the sales tax as being the sale of tangible personal property."

The department is not saying that 50 percent, or any other percentage, is to be used as a basis of separating the sale of tangible personal property from the sale of service.

Several methods have been approved by the division when percentages are used. There are predicated on (1) The funeral director must establish a fair and reasonable percentage to assure the state of at least the correct amount of the tax. (2) Auditable records must be maintained to enable verification of the accuracy of the percentage used, and (3) The invoice to the customer must have imprinted thereon (by stamp or some other designation) the method used in computing the tax.

South Carolina undertakers and funeral directors incur sales and/or use tax liability by reason of sales and service rendered in South Carolina, regardless of the situs of interment. Out-of-state undertakers and funeral directors incur no sales and/or use tax liability to South Carolina when the only business the out-of-state funeral director or undertaker has within this state is the rendering of burial service.

Where undertakers and funeral directors service burial insurance policies, the measure of the sales tax is the total of receipts from all sources accruing to the undertaker as a result of his furnishing tangible personal property. In some instances the undertaker furnishes caskets or other property, the sales price of which is in excess of the amount covered by the insurance policy, which excess is paid by the family of the deceased. In these instances the total sales price of the substituted property is to be used as the measure of the tax.

Where the undertaker is also the insurer, his use of property in servicing his insurance policies is not a sale of such property. In these instances the undertaker is the purchaser at retail of the property used on which he owes either sales or use tax at the time he purchases the property.

Undertakers purchase property, which they sell at retail as stated above, at wholesale, tax-free.

Undertakers purchase at retail consumable supplies, equipment, and property furnished in servicing their own insurance contracts, which consumable supplies and equipment are taxable to them at the time of purchase, including hearses, ambulances, instruments, tools, fixtures, furniture, all other equipment, embalming fluids, chemicals of all kinds, and all other supplies.

117-309.9 Sign Companies

A person engaged in the business of erecting, on properties owned or controlled by him, signs for the display of products of a second party for a consideration is deemed to be engaged in the business of selling a service. A tax is due measured by the purchase price of all tangible personal property used or consumed by such person as additions or improvements to realty.

A person engaged in the business of designing, fabricating and erecting signs on properties of another, for the display of that person's products, is deemed to be a retailer. The gross proceeds of the sale of such signs are subject to the tax. If the signs are leased or rented, the lease or rental proceeds are subject to the tax.

A person engaged in both of the above businesses shall pay the tax in accordance with the applicable provisions as set forth hereinabove.

A person who designs and constructs a sign as defined in the second paragraph above may, if all statutory requirements are met, be considered a manufacturer.

117-309.10 Interior Decorators

Interior decorators are generally engaged in the business of selling home or office furnishings of which many, such as portieres, curtains, draperies and seat and slip covers, are made to customers' specifications. The total

256 FINAL REGULATIONS

charge for such made-to-order merchandise is subject to the tax without any deduction for fabrication labor whether such labor is performed by the decorator or by others for the decorator's account.

It is frequently necessary to repair, renovate or reupholster furniture. Sublet repairs are taxable on the total charge to the customer when the repair materials are sold or furnished by the decorator.

It may also be necessary to remodel interiors such as by painting or papering walls, hanging mirrors, pictures and lighting fixtures or other accessories, or replacing floor coverings. Labor for these purposes is not subject to the tax provided it is separately shown from the sales price of tangible personal property on the invoice to the customer. Other exempt charges when separately invoiced to the customer are consultation fees and reimbursement for travel expenses.

117-309.11 Sellers of Ice

Sales of ice by manufacturers and wholesalers to licensed retail dealers engaged in the retail business of selling ice to users or consumers are sales for resale and are not subject to the tax. Ice sold to such licensed retailers which is withdrawn for use or consumption bears the sales and/or use tax and the same must be reported and remitted to the department. Ice sold to restaurants, cafes, cafeterias, drug stores, etc., which enters into and becomes an ingredient or component part of the food and drink which such businesses compound for sale are sales at wholesale, free of the sales and use tax.

Sales of ice made for any other purposes than above specified are sales at retail and subject to the tax.

117-309.12 Sellers of Oxygen, Propane or Butane

Gases such as oxygen, etc., sold to hospitals, medical doctors, dentists, and others for professional use are subject to the sales or use tax, whichever may apply.

Sales of propane or butane gases or any similar gas, unless an otherwise exempt sale to a manufacturer or compounder, are subject to sales or use tax, whichever may apply.

Gas pressure regulators purchased by a seller of propane gas for use by such seller on storage tanks furnished to customers come within the exemption found at Section 12-36-2120(17). The proceeds derived from the sale or lease of such regulators to customers are subject to the tax.

117-309.13 Sellers of Automobile Seat Cover and Top Linings

Seat covers and prefabricated top linings are recognized units of tangible personal property which, when sold, are subject to the tax on the total sales price without any deduction for cost of materials, labor costs, or any other cost which is a part of the fabrication, distribution or selling.

117-309.14 Sellers of Ice Cream Freezers

Sales of ice cream freezers of the type used on trucks or in retail outlets for the making of ice cream are subject to the tax.

117-309.15 Rentals and Leases

The gross receipts or gross proceeds proceeding or accruing from the leasing or renting of tangible personal property are subject to the sales or use tax.

When on long-term continuing lease agreements where the lessor is required to furnish, for a consideration, maintenance services and/or operating supplies, the tax may be paid measured by (1) the total amount received, or (2) the total amount, taking as a deduction on the return charges for such services and/or supplies.

By using the first method, the lessor may purchase tax-free, as for resale, all items of tangible personal property passed on to the lessee. By using the second method, tax must be paid on all items of tangible personal property used in servicing the leased property.

If the owner of tangible personal property furnishes an operator or crew to operate such property, such owner is not deemed to be renting or leasing the property but is rendering a service and the receipts therefrom are not subject to the sales or use tax. Persons purchasing tangible personal property for use in rendering such service are liable for payment of sales or use tax at the applicable rate on the purchase price.

Where a person customarily rents tangible personal property and customarily withdraws the same for his own use, storage or consumption, a tax is due by such person on each withdrawal for use, the tax to be measured by the amount he would customarily receive as rental had the property been leased or rented for a like period of time. In the alternative the tax may be paid on the full purchase price of the property and no further liability incurred on withdrawals for use. Having once elected either method of reporting on withdrawals for use, the taxpayer must so continue unless and until permission has been received from the department in writing to make a change. Regardless of the method selected for accounting for the tax on withdrawals for use, the tax is due on all amounts proceeding or accruing from the rental, lease or sale of the property.

117-309.16 Materials Used to Recondition Automotive Vehicles for Resale.

The purchases of materials and parts by automobile dealers for purposes of reconditioning automotive vehicles for resale are construed to be purchases of tangible personal property at wholesale and are, therefore, not subject to the sales or use tax.

The practical result of the foregoing is to enable the automobile dealer to purchase free of the tax for resale only those items of tangible personal property which are to be passed on to the ultimate consumer, and does not extend to such things as machinery, equipment, tools, paint remover, upholstery cleaner, tire cleaner and other properties which do not become a part of the vehicle being reconditioned for sale.

117-309.17 Withdrawals From Stock, Merchants.

To be included in gross proceeds of sales is the money value of property purchased at wholesale for resale purposes and subsequently withdrawn from stock for use or consumption by the purchaser.

The value to be placed upon such goods is the price at which these goods are offered for sale by the person withdrawing them. All cash or other customary discounts which he would allow to his customers may be deducted; however, in no event can the amount used as gross proceeds of sales be less than the amount paid for the goods by the person making the withdrawal.

117-310 Freight and Delivery Charges

Whether or not freight, delivery, or transportation charges may be deducted by the seller from the selling price of tangible personal property sold for use or consumption, in computing his liability for tax under the sales and use tax law, does not depend upon the separate billing thereof, but depends upon whether or not the services rendered by the railway company or other transporting agency are rendered to such seller or to the purchaser.

If the seller contracts to deliver tangible personal property to some designated place, or is obligated under the contract to pay transportation charges to some designated place, the transportation services are rendered to the

258 FINAL REGULATIONS

seller or user and the selling price of the tangible personal property so transported must include the amount of the transportation charges. In this event such charges are not deductible by the seller in computing his tax liability under the law.

On the other hand, if the seller contracts to sell tangible personal property FOB origin, the title to the property passing at such point to the buyer and the buyer pays the transportation charges, then the transportation services are rendered to the buyer and are not a part of the selling price of the vendor. Therefore, such transportation charges should not be included by the vendor in computing his tax liability under the law. These principles will apply irrespective of whether such charges are separately billed by the seller from the tangible personal property sold.

For example:

(a) If the sale is made F.O.B. point of destination or place of business of the buyer, for a lump sum price or a price or a price per unit, in such manner as to indicate that the cost of transportation is a cost to be borne by the seller, the total amount received by the seller constitutes "gross proceeds of sale," within the meaning of the law. In such case, the seller is not permitted to separate the cost of the goods from the cost of the transportation nor may the seller deduct any estimated or actual cost of transportation from such gross proceeds in making returns under the law.

(b) If the goods are F.O.B. destination under terms by which the purchaser is to pay the freight and deduct such amount from the invoice, the transaction should be treated in the same manner as in paragraph (a) hereinabove, namely the gross proceeds of sale should include the total amount of the agreed sales price, without deduction for freight whether paid by the seller in the first instance or paid by the buyer for the seller and deducted from the invoice.

(c) If the sale is made F.O.B. point of origin, the delivery of the goods to the carrier is generally construed as equivalent to the delivery of the goods to the buyer, and the gross proceeds of sale in such case would not include the freight, whether the freight is by agreement of the parties advanced or prepaid by the seller for the buyer or whether such freight is paid at destination by the buyer. In such cases, the "gross proceeds of sale" only include the agreed sales price of the goods. Any freight so advanced, billed as a special item, is not included as proceeds of the sale, but upon payment is properly treated as a reimbursable expense paid by the seller at the instance and request of the buyer.

(d) No practice of invoicing or billing will entitle the seller to deduct from gross proceeds of sale any cost or expense, actual or estimated, in cases where the seller, by use of his own means of transportation, effects such delivery.

(e) No tax is due on delivery charges by a lessor who, by means of his own transportation facilities, delivers tangible personal property which is the subject of a written lease expressly providing that the lessee assumes all risk of loss or damage to the property from the effective date of the lease. Conversely, when the lessor agrees to assume responsibility for loss or damage to the property during transit, charges by the lessor for such transportation must be included in the tax base. These same principles apply to sale when delivery is by means of the sellers own transportation facilities for a consideration separate and apart from the sales price of the property.

117-310.1 Transportation Costs, Sellers.

In no event may a seller deduct costs of bringing property to his place of business or costs of delivering property from factory to his customer when such factory-to-customer transportation is paid by the seller either to a transportation company, the manufacturer, or by way of credit to his customer for transportation costs paid by the customer and deducted from seller's invoice.

117-311 Railroads

The following addresses the application of the sales and use tax to the transactions of railroads. The list of transactions discussed is not all inclusive.

117-311.1 Railroad Companies, Sales to.

Some railroads maintain storehouses, in South Carolina for the temporary storage of materials and supplies. Some of these materials and supplies are for use in South Carolina and some are for use in other states. Frequently, when materials are shipped to such storehouses, the railroad does not know what materials are for use in South Carolina, and what are for use in other states. Because of the impracticability of determining what proportion of such materials and supplies is subject to the tax at the time of their purchase, and because of the inequity of imposing the tax on the total purchase of such materials and supplies, the railroad may apply for a certificate under the provisions of Section 12-36-2510, which allows such railroad to purchase materials and supplies at wholesale, and to remit the use tax on the materials and supplies withdrawn for use or consumption within this state.

117-311.2 Railroad Companies - Crossties and Timbers.

Crossties and timbers sold to or used by railroad companies are subject to the sales or use tax, whichever may apply, on the following basis:

- (a) Where a railroad buys in this state untreated ties or timber paying the South Carolina sales tax due thereon, and thereafter has such ties or timber creosoted or otherwise treated either within or without South Carolina, it becomes liable upon use of such property in South Carolina for the tax based upon the sales price of the creosote or other material used in the treatment thereof.
- (b) Where a railroad buys in South Carolina untreated ties and timber for shipment in interstate commerce, without paying the South Carolina sales tax thereon, and such ties and timber are shipped and creosoted without the state, and subsequently shipped into and used within the state, such railroad will be required to pay a use tax thereon measured by the full price of the finished product brought into the state.
- (c) Where a railroad buys without the state untreated ties and timber, and thereafter brings said ties and timber inside the state and has them creosoted within the state and uses them within the state, such railroad would owe a use tax based upon the cost of untreated ties and timber, plus the sales price of the creosote or other material used in the treatment thereof.
- (d) Where a railroad buys without the state untreated ties and timber, and has the same creosoted outside the state, and subsequently brings and uses the same within the state, such railroad would be required to pay a use tax thereon based upon the cost of untreated ties and timber, plus the cost of processing.

117-311.3 Railroad Companies - Sales to of Crossties and Timbers by Producer.

The gross proceeds of the sale of timber when sold in the original state of production or preparation for sale and when sold by the producer thereof or by members of his immediate family are exempted from payment of sales or use tax, whichever would otherwise be considered to apply. Nothing contained herein, however, shall be construed to exclude from the measure of the tax the gross proceeds of the sale or sales of timber or timber products treated with wood preservatives.

117-311.4 Railroad Companies - Machines

260 FINAL REGULATIONS

Machines and machinery when sold to or used by railroad companies in maintaining, repairing, or reconditioning their equipment are subject to the sales or use tax, whichever may apply. The machine exemption is not construed as applying to machines or machinery purchased for use by railroad companies in maintenance operations.

117-311.5 Railroad Rails.

Railroad rails, crossties, frogs, spikes, etc., do not in themselves constitute machines or machinery when used in the construction of a railway or railroad either on or above ground or in a mine or quarry. This material is rather in the nature of building material and should be considered as such for taxing purposes.

117-311.6 Railroads, Lumber Used for Repairing Railroad Cars.

Lumber especially fabricated for use in repairing railroad cars is entitled to be purchased free of the tax under Section 12-36-2120(20), which exempts, among other things, from payment of sales or use taxes, railroad cars or locomotives and the parts thereof.

117-311.7 Railroads, Motor Oil Used in Diesel Engines.

Motor oil of the type used in the operation of a diesel engine for lubricating purposes does not qualify for fuel exemption even though it may be entirely consumed in such operation.

117-311.8 Ties and Timbers.

Ties and timbers, treated or untreated, are subject to sales or use tax when delivered by the seller to railroads in South Carolina. The seller must report and remit tax on these sales.

117-311.9 Ties and Timbers in Interstate Commerce.

Ties and timbers sold FOB South Carolina shipping point on a purchase order requiring the seller to ship to out-of-state destination in interstate commerce are not subject to sales tax regardless of whether or not shipment is made by the use of the purchaser's transportation facilities when the purchaser is a common carrier.

117-311.10 Ties and Timbers, Constructive Delivery of.

Ties and timbers are taxable when sold under bulk contract, with the purchaser inspecting and approving the material at the plant or yard of the seller and the seller segregating and allotting the approved material to the purchaser for future shipment according to subsequently issued shipping instructions. This material is to be reported by the seller as subject to the tax in the month in which it is shown as sold on his books.

117-311.11 Meals Served by Railroads, Airlines, Etc.

Sales of meals, drinks, etc., by railroads within this state are subject to the sales tax.

Meals, etc., served by railroads as a part of the transportation service, for which no separate charge is made, are not required to be reported as retail sales by the companies. In such instances the companies are considered to be the consumers of the foods, etc., served and will be required to pay tax thereon to the suppliers.

117-312 Containers and other Packaging Material

The statute provides an exemption (Section 12-36-2120) and an exclusion (Section 12-36-120) for containers and other packaging material. The following explains the application of the exemption and exclusion in certain situations.

117-312.1 Containers and Packaging Materials, Sales of to Licensed Retailers.

Licensed retailers purchase free of sales or use taxes wrapping paper, wrapping twine, paper bags and containers for use incident to the delivery of tangible personal property sold by them. They also purchase tax-free materials used in packaging personal property sold by them.

The list below, while illustrative of items falling within the exemption or exclusion, is not exhaustive:

Souffle cups, butter chips, paper cups, paper plates, boxes and crates and glazed tissue used to package articles of food.

It will be seen that items such as straws, napkins, wooden or paper spoons and forks do not meet the requirements outlined above and, hence, must bear the tax. Such items are rather in the nature of supplies used or consumed by the retailer in the operation of his or its business.

117-312.2 Containers, Beverage Boxes and Crates.

Especially designed crates and boxes of the type used by distributors of soft drinks or milk products retained by the purchaser of such products for reuse by the distributor thereof may be purchased free of sales or use taxes.

The exemption extends to materials used in repairing such crates and boxes.

117-312.3 Packaging Materials.

Section 12-36-120 excludes from the measure of the sales or use taxes the gross proceeds of the sale of "...materials, containers, cores, labels, sacks or bags used incident to the sale and delivery of tangible personal property, or used by manufacturers, processors, and compounders in shipping tangible personal property."

The term "materials" is deemed to include, among other things, wrapping paper, twine, strapping, nails, staples, wire, lumber, cardboard, adhesives, tape, waxed paper, plastic materials, aluminum foils, and pallets used in packaging tangible personal property for shipment or sale; also excelsior, cellulose wadding, paper stuffing, sawdust and other packing materials used to protect products in transit. Materials such as dry ice and rust preventives used to preserve property during shipment do not come within the exemption. Also excluded from the exemption are materials such as strapping and dunnage (e.g. lumber used to block up equipment for shipment) to temporarily brace or block tangible personal property within trucks and railroad cars as a protection during shipment.

"Containers" include, but are not limited to, such items as, paper, plastic or cloth sacks, bags, boxes, bottles, cans, cartons, drums, barrels, kegs, carboys, cylinders, and crates.

The term "cores" is defined to include spools, spindles, cylindrical tubes and the like on which tangible personal property is wound.

Labels affixed to manufactured articles to identify such products are exempted from the tax only when such labels are passed on to the ultimate consumer of such products.

117-312.4 Advertising Materials.

Printed advertising materials and/or price lists placed into cartons or packages with tangible personal property being packaged for shipment or sale are subject to the sales or use tax.

117-312.5 Multiform Invoices.

262 FINAL REGULATIONS

Multiform invoices used to invoice the customer and also to serve as a packing slip and address label are subject to the sales or use tax.

117-312.6 Grease, Protective.

Grease used as a protective coating for manufactured products while in storage is purchased at retail for such use and subject to the tax. This material is a supply item which is used or consumed by the manufacturer. Grease used as a protective coating for manufactured products while in transit is purchased at wholesale, free of the tax, as a material used incident to the sale and delivery of tangible personal property.

117-312.7 Rust Preventives.

Petroleum products and other materials used as rust preventives or for surface protection of metal products while in storage are subject to sales or use tax. Petroleum products and other materials used as rust preventives or for surface protection of metal products while in transit are not subject to sales or use tax.

117-312.8 Icing of Perishables.

The charge for ice when sold to common carriers for the icing of perishables during shipment or transshipment, will include the cost of transportation where the ice is transported to the truck loading platform, or to a storage warehouse in the ice manufacturer's transportation equipment, and/or under terms where the transportation is for the account of the ice manufacturer, and the charge will also include any charges for placing said ice in a storage warehouse by the ice manufacturer prior to the actual car icing regardless of whether said charges for transportation and/or storage are contracted for or invoiced separately by and between the ice manufacturer and the carrier.

The sales price of the ice will not include the charge for the actual icing of the railroad car or truck in which the perishable property is to be shipped, provided the charge for said icing service is separately billed to the common carrier.

117-313 Labor

The following addresses the application of the sales and use tax to fabrication labor, subcontracted labor, installation labor, and alteration labor. There are many sales and use tax transactions involving labor and the following is not all-inclusive.

117-313.1 Labor, Fabrication.

No method of billing will serve to exempt from the measure of the tax the cost of materials used, labor or service cost, interest charges, losses or any other expenses whatsoever that are a part of the manufacturing, compounding, processing or fabrication of tangible personal property for sale or resale.

117-313.2 Subcontracted Labor, Repairs.

In no event may payments for the repair, renovating or rebuilding of tangible personal property for resale be deducted from gross proceeds of sales when any repair materials are furnished by the person purchasing such services for sale or resale.

117-313.3 Installation Charges.

Not subject to the sales or use tax are charges for installation incident to the sale of tangible personal property when such charges are separately stated from the sales price of the property on billing to customers and provided the seller's books and records of account show the reasonableness of such labor in relation to the sales price of the property.

117-313.4 Alteration Charges.

Expenses borne by the seller of clothing for alteration charges, whether such services are performed by the seller or subcontracted, are not deductible from gross proceeds of sales.

Conversely, a charge for alteration services made in addition to the sales price of tangible personal property is not subject to tax when such charge is separately stated from the sales price of tangible personal property on the invoice to the customer.

117-314 Construction

Sales of building materials to contractors, builders, or landowners for resale or use in the form of real estate are retail sales in whatever quantity sold.

117-314.1 Sales of Building Materials.

Sales of building materials for use in adding to, repairing or altering real property, are subject to the sales or use tax at the time of purchase even though the property erected therefrom may be subsequently leased or rented to the person who owns or controls the land on which the property is situate. Examples include, but are not limited to, building materials used in constructing grain storage tanks, silos, pre-engineered buildings and other structures.

Conversely, subject to the tax are proceeds from the sale or lease of a manufactured unit delivered and/or set in place on lands owned or controlled by a person other than the seller or lessor. Examples include, but are not limited to, mobile homes, manufactured classrooms and motel units.

117-314.2 Building Materials.

Building materials when purchased by builders, contractors, or landowners for use in adding to, repairing or altering real property are subject to either the sales or use tax at the time of purchase by such builder, contractor, or landowner. "Building materials" as used in the Sales and Use Tax Law includes any material used in making repairs, alterations or additions to real property. "Builders," "contractors," and "landowners" mean and include any person, firm, association or corporation making repairs, or additions to real property. The term "building materials" includes such tangible personal property as lumber, timber, nails, screws, bolts, structural steel, elevators, reinforcing steel, cement, lime, sand, gravel, slag, stone, telephone poles, fencing, wire, electric cable, brick, tile, glass, plumbing supplies, plumbing fixtures, pipe, pipe fittings, prefabricated buildings, electrical fixtures, built-in cabinets and furniture, sheet metal, paint, roofing materials, road building materials, sprinkler systems, air conditioning systems, built-in-fans, heating systems, floorings, floor furnaces, crane ways, crossties, railroad rails, railroad track accessories, tanks, builders hardware, doors, door frames, window frames, water meters, gas meters, well pumps, and any and all other tangible personal property which becomes a part of real property.

117-314.3 Transferred Property, Use Tax Liability.

Building materials transferred from out-of-state into South Carolina for use, storage, or consumption are assumed to have been purchased for such use, storage, or consumption in South Carolina and are subject to the South Carolina use tax.

264 FINAL REGULATIONS

The department will allow credit to use tax liability for new and unused building materials transferred out of South Carolina which were purchased out-of-state and on which South Carolina use tax has been paid.

No allowance will be made for outgoing transfers of any tangible personal property, either new or used, the sales of which were subjected to the South Carolina sales tax.

In determining the basis of the tax on transferred property, aside from building materials, the assumption will be that the property was purchased for use, storage, or consumption in South Carolina and that the tax has not been paid thereon. The assumption that the property was purchased for use, storage, or consumption in South Carolina is overcome when it is shown that there has been a real and substantial use of the property outside of this state prior to its transfer into this state in which event the basis for the tax is determined by the proportion of the original purchase price of such property as the duration of time of use in this state bears to the total useful life thereof.

117-314.4 Awnings

Generally, an awning attached to a building as a permanent fixture is a part of the building and comes within the provisions covering the sale of building materials.

Metal or other permanent type awnings attached to buildings with screws or bolts or otherwise securely attached become a part of the building. The materials from which these awnings are made come within the building material class. When the materials are purchased prefabricated, sales tax is due by the person making the installation to the supplier, if purchased in South Carolina, or use tax is due the state of South Carolina if purchased from an out-of-state seller not registered under the use tax.

Where the person making the installation purchases materials such as sheets of aluminum from which he manufactures the components of awnings the tax is due to the state by such person based upon the fair market value of the components laid down at the job site.

It is the rule of the department that lightly attached cloth awnings do not fall into the building material category and are to be taxed at the sale thereof from the awning dealer to the property owner.

117-314.5 Elevators.

The component parts of an elevator constitute building materials within the meaning of the act. The sale of elevator components to contractors, builders or landowners for use in the form of real estate is, therefore, a retail sale notwithstanding that the purchaser constructs therefrom an elevator which ultimately becomes the property of others.

Where the manufacturer of elevator components uses the products of his manufacture in the performance of a construction contract, he is defined under the statute as the user of such equipment and liable for the tax based upon the reasonable and fair market price thereof at the time and place where such property is used by him.

117-314.6 Pumps.

Well pumps when installed become realty along with well casing, pump house, well connections, etc. The person who installs the pump is the purchaser at retail who must pay sales tax or use tax, as the case may be.

117-314.7 Pump Installed by Contractor.

A contractor who installs a pump for a city or county is required to pay tax on his purchase of the pump. The pump is in the same category as any other building materials which become affixed to realty. When title to a pump installed under contract passes from the contractor to the landowner it has ceased to be personal property and has become real property.

117-314.8 Crossties, Timbers, Etc.

Crossties, switch ties, pilings, bridge timber, telephone and telegraph poles, and crossarms are building materials, also, materials used in the construction of highways, bridges, railroads, telegraph and telephone lines, fences and dams fall within the “building materials” class.

117-314.9 Contractors Equipment, Useful Life of.

The department has determined that Bulletin F of the Internal Revenue Services as revised in 1942, be used to reflect the useful life of motor vehicles, machines, machinery, tools, and other equipment and tangible personal property brought, imported, or caused to be brought into South Carolina for use in constructing, building, or repairing any building, highway, street, sidewalk, bridge, culvert, sewer, or water system, drainage or dredging system, railway system, reservoir or dam, power plant, pipe line, transmission line, tower, dock, wharf, excavation, grading or other improvement or structure, or any part thereof.

117-314.10 Machines, Pipe Threading.

Pipe threading machines used for construction purposes by a contractor or other builder do not come within the machine exemption.

117-315 Newspapers and Newsprint Paper

The following addresses the exemptions applicable to newspapers, newsprint paper, and newspaper publishers.

117-315.1 Newspapers

Section 12-36-2120(8) exempts from the measure of the tax the gross proceeds of the sale of newspapers.

In order to qualify as a newspaper the publication must meet at least the following requirements:

1. It must be commonly and ordinarily considered and accepted as a newspaper by the public it is intended to serve.
2. It must be published at stated short intervals - daily or weekly.
3. It must contain news of general interest and intelligence of current events.
4. It must be printed on newsprint paper.
5. It must not, when its successive issues are put together, constitute a book. Even though the publication may be devoted primarily to matters of specialized interest, such as mercantile, political, religious or sporting, if in addition it qualifies under all of the foregoing it is entitled to be classed as a newspaper.
6. Newspapers do not include magazines, periodicals, bulletins, and other publications.

117-315.2 Newsprint Paper

Section 12-36-2120(8) also exempts from the measure of the tax the gross proceeds of the sale of newsprint paper. “Newsprint paper” is construed to include only that paper on which news is printed by a newspaper. This property is specifically exempted when so used.

266 FINAL REGULATIONS

117-315.3 Newspaper Publishers

Newspapers are concerned with three distinct and separate activities in the production and publication of the finished product - a newspaper. While these operations may be interwoven in the overall production, for sales and use tax purposes, a separation must be made. These operations or phrases may be designated as follows:

1. News gathering
2. Composition and printing
3. Circulation

News is gathered by reporters, submitted by the public, and furnished from other news gathering sources through use of TWX and tape monitors. Pictures, mats, and engravings are secured by employees of the publisher, submitted by the public, purchased by the printing concern, or forwarded by wire from news gathering agencies.

Newspaper publishers customarily utilize machines and equipment with which to produce etchings from photographs. The etchings are forwarded to the composing room for assembly into page forms, (along with other type and engravings) in order to produce the newspaper mat.

Both the news and the advertising copy must go through what is known as the composing and stereotyping departments, where type is set by machines using what is known as type metal, then put together in page forms, and from there going to the stereotype department, where machines are used to imprint on what is known as newspaper mats, the type as set in the printing or compounding department. From this page mat a plate is cast by machine, using composition metal, which after being cast is attached to the printing machine or press cylinders and the matter thereon transferred to newsprint running through the machines. The metal used in producing the type and also in producing the plates is remelted and used over and over again, with the necessity of certain parts of it being from time to time refined. The mats used in making the plates necessary to complete the finished product are of no value after casting the original plate. Advertising mats may be retained for reuse in preparing subsequent issues.

Certain large size type is manufactured in the plant and all or most of the ordinary size type is manufactured in the plant.

In the preparation of type, etchings, plates, etc., a great deal of expensive and complicated machinery is used. In addition to linotype machines and other special machines for casting larger sized type, machines are used to fabricate "spacer" strips, saws and planners are used to prepare metal plates for the page forms, photographic machinery and equipment is used to prepare etchings, a complete foundry is maintained for melting, remelting and purifying the composition metal, together with other machinery.

Circulation may be effected by use of the mails, by newsboys, or other media.

It has been determined that the actual manufacturing process begins with machinery used in producing etchings (or plates) and ends with the machine used to bundle the finished newspaper for circulation. Excepted from the tax under these circumstances would be such machines as linotype and other machines used in preparing special type, machines used in transferring images from mats to flat metal plates, machines used in transferring images from these flat metal plates to newspaper mats, machines used in producing half round plates to be used on the printing presses, planners, saws, furnaces, mechanical conveyors and the actual printing press itself, together with the integrated conveyor thereon. Included also in this category would be the foundry machinery for melting and salvaging composition metal, machines used in making metal etchings, machinery used for preheating molds (mats) for casting and other like machinery.

Also exempted from the tax are such items as flecto sheets, seal tonic and toning alloys.

Newsprint paper, aside from being specifically exempted under the statute, is likewise an ingredient of the tangible personal property being manufactured for sale and is exempted from the tax. The same is true of ink which becomes an ingredient or component part of the property being manufactured for sale. Ink for any other purposes is subject to the tax.

Items subject to the tax under the above construction would consist of photographs, chemicals (except as otherwise noted) used in preparing etchings, news gathering equipment (such as tape monitors, TWX, and photo-transmission equipment); typewriters used in producing news copy by reporters, and of course, office supplies, equipment and machinery, together with any machines used in distribution of the finished product.

Engravings are exempted as parts or attachments to machines used in manufacturing, compounding or processing tangible personal property.

Newspaper mats have been exempted as constituting parts or attachments to machinery used in manufacturing tangible personal property. Note, however, that on purchases of advertising mats the department has held "...that such mats were exempt under the provisions of Section 12-36-2120 as being parts or attachments to machines used in manufacturing or processing tangible personal property for sale."

"However, the [department] held that catalogs or indices supplied in connection with such mat services would constitute the sale of tangible personal property and would therefore be subject to the tax."

A new process may make obsolete the linotype, or "hot process." Tape perforating machines, a computer and photo composing machinery are used to produce positive prints. These prints are affixed to page layouts, the layouts photographed and the resulting negatives used to make etchings. The etchings may then be used directly on the printing press in lieu of plates now produced by use of mats and type metal.

Tape perforating machines, computers and photo composing machines may be purchased tax-free when used as outlined above.

No tax is due on purchase of film and plates used in making etchings and engravings and chemicals which become a part of a finished etching or engraving. The exemption does not extend to film and chemicals used by reporters and other news gatherers.

Chemicals used directly in developing film and etching engravings for use by the publisher in manufacturing a newspaper may be purchased tax-free provided the machine in which the chemicals are used is exempted by Section 12-36-2120(17).

117-316 Books

Code Section 12-36-2120(3) provides exemption for the sale of textbooks, books, magazines, periodicals, newspapers, and access to on-line information systems used in a course of study in primary and secondary schools and institutions of higher learning or for students' use in the school library of these schools and institutions and books, magazines, periodicals, newspapers, and access to on-line information systems sold to publicly supported state, county, or regional libraries.

117-316.1 Textbooks

The term "textbook" is construed to include only books purchased for and used in elementary schools, high schools and institutions of higher learning. Included within the definition of textbooks are school library books, encyclopedias and dictionaries. Also deemed textbooks when part of a prescribed course of study are workbooks, band and sheet music, plays, filmstrips, transparencies, motion picture films, audio tapes and records, recorded music and periodicals.

268 FINAL REGULATIONS

Examples of sales subject to the tax are test sheets, answer sheets, evaluation criteria, games, albums, pupil cumulative records, guide pamphlets, yearbooks, award certificates, diplomas, writing materials, art supplies, drafting supplies, easels, projectors, projector lamps and bulbs, projection screens and equipment carts or tables, magboards, flannel boards, laboratory supplies and equipment, biological supplies incidental to classroom instruction, athletic equipment, shop supplies and equipment, record players, recorders, computer instructional equipment, manipulated devices, charts, maps (including globes), map stands, raw film, blank tapes, and any and all other items of tangible personal property used in the classroom or office which do not qualify as "textbooks" as hereinabove defined.

117-316.2 Sale of Books to Libraries

With respect to the exemption for books sold to legally established, public supported State, County and/or Regional libraries, the term "books" is construed to include filmstrips of a type in general use by elementary schools, high schools, and institutions of higher learning. Subject to the tax when purchased by libraries are all other properties such as furniture, fixtures, typewriters, projectors, turntables, globes, stationery, index cards, files, shelving, and visual aids.

117-317 Sales of Repossessed Property

The following addresses the application of the sales and use tax to repossessed property.

117-317.1 Finance Companies and Other Lending Institutions.

Finance companies and other lending institutions are deemed to be retailers when making sales of tangible personal property physically or constructively repossessed in claim and delivery proceedings, by peaceful surrender, or by any other means whatsoever.

The measure of the tax is the total amount proceeding or accruing from such sales whether the sale is for cash or is secured by a new conditional sales contract. On assumption agreements the amount to be included in gross proceeds of sales is the balance in default by the borrower and any down-payment made by the person assuming the borrower's obligation in exchange for the repossessed property. This is irrespective of the mechanics used by lenders in transferring title to repossessed property to new owners.

117-317.2 Retailers.

Sales of tangible personal property physically or constructively repossessed by a retailer through the mechanics of claim and delivery proceedings, by peaceful surrender or otherwise are subject to the sales tax when resold either for cash or on new conditional sales contracts.

On assumption agreements the amount to be included in gross proceeds of sales is the balance in default on conditional sales contracts held by retailers and any down-payment made by the person assuming the former purchaser's obligation in exchange for the repossessed property. This is irrespective of the mechanics used by such retailers in transferring title to repossessed property to new owners.

Conversely, no tax is due by a retailer when under the terms of recourse contracts with finance companies and other lending agencies it becomes necessary for the retailer to find a buyer to assume the balance owed a lender because of default on the part of the borrower.

117-318 Gross Proceeds of Sales and Sales Price

“Gross proceeds of sales” is the basis for calculating the sales tax and “sales price” is the basis for calculating the use tax. There are many issues that arise from determining what is or is not included in the basis for the tax. The following will address some of these issues.

117-318.1 Warranties

On all sales of tangible personal property which include a charge for warranty which is a part of the sales price of the property, such warranty charges are to be included in the measure of the tax, even though said warranty charges may be billed separately from the price of the merchandise. Note, however, that Code Section 12-36-2120(53) exempts “motor vehicle extended service contracts and motor vehicle extended warranty contracts.”

Warranty contracts entered into subsequent to the sale of tangible personal property and which are separate and distinct from the sale, and for which a separate and distinct charge is made are not to be included in the measure of the tax.

In either event, the person servicing warranties incurs a tax based on the fair market value of the tangible personal property withdrawn, used or consumed in servicing all warranties.

Note however, Section 12-36-90 excludes from the measure of the tax property withdrawn from such business or stock for use or consumption by such business in replacing parts under written warranty contracts given without charge to the purchaser at the time of original purchase, provided the tax was paid on the sale of the part found to be defective or on the sale of the property of which the defective part was a component; and provided further no charge for labor or materials is made to the warrantee.

117-318.2 Carrying and Finance Charges

When the seller has an established price for the goods he sells, that price is the amount to be included in gross proceeds of sales even though the established price may include an amount to cover a carrying charge. Where the seller has an established cash price and when selling on an extended payment basis, adds a separate charge for financing, the additional charge is not to be included in gross proceeds of sales.

In no event may finance or carrying charges be deducted from gross proceeds of sales when not shown as a separate item in the seller's billing to his customer.

117-318.3 Lay-away Sales

Amounts received in payment of the sales price of property held by the seller until the total amount of the sales price is paid to him are taxable in the month during which such amounts are received by the seller. In the event of the failure of the buyer to complete his payments, no refund of taxes paid on the amounts received by the seller will be made except where the seller refunds all amounts paid to him by the purchaser.

117-318.4 Withdrawals for Use - Renter

Where a person customarily rents tangible personal property and customarily withdraws the same for his own use, storage or consumption, a tax is due by such person on each withdrawal for use, the tax to be measured by the amount he would customarily receive as rental had the property been leased or rented for a like period of time. In the alternative the tax may be paid on the full purchase price of the property and no further liability incurred on withdrawals for use. Having once elected either method of reporting on withdrawals for use, the taxpayer must so continue unless and until permission has been received from the department in writing to make a change. Regardless of the method selected for accounting for the tax on withdrawals for use, the tax is due on all amounts proceeding or accruing from the rental, lease or sale of the property.

117-318.5 Gift Wrapping Charges

270 FINAL REGULATIONS

The gross proceeds proceeding or accruing from charges for gift wrapping of tangible personal property sold at retail are subject to the sales and/or use tax.

117-318.6 Gratuities

An amount or percentage, regardless of its designation, added to the price of meals pursuant to a requirement of the retailer furnishing such meals is a part of the sales price of such meals and must be included in the measure of the tax even though all or a part thereof may be paid by the retailer to his employees. Conversely, when a customer voluntarily provides a tip for an employee of a retailer, such a tip is not subject to the sales tax whether given directly to the employee in cash or added by the customer to his bill and charged by the retailer to the customer's account; provided, however, that in the latter instance the full amount of such tip is turned over to the employee by the retailer.

117-318.7 Bottle Deposits

Deposits required by retailers to insure return of reusable containers (bottles) are not subject to the sales tax.

117-319 Warehousemen,

Sales To: All property purchased for use in operating places of storage are subject to sales or use tax, whichever may apply, including all tickets, labels, receipt forms, heating or cooling equipment, fire protection equipment, pest control supplies and equipment, compressors, containers, and crating materials and any and all other supplies, materials, or equipment purchased for a use incidental to the storing or warehousing of property of any kind of character.

Note, however, that warehousemen may also be engaged in the business of selling, processing, or manufacturing for sale, in which event the supplies and equipment used in such activities will be taxable or not in accordance with the rules applying to the use of property for such purposes.

Sales Made By: Receipts of warehousemen from their services in storing, handling, packing, crating, delousing, etc., property for others are not subject to the sales tax. Any materials used incidental to the rendering of such services are taxable on the sale to the warehousemen.

When, however, warehousemen buy and sell property as a regular course of business such sales, if not otherwise exempted, are subject to the sales tax, including sales of goods held on consignment and including transactions in which the warehouseman acts as a broker selling goods not actually owned by him or in his possession at the time he accepts the order.

Warehousemen are subject to tax with respect to sales of secondhand property forfeited to them in the operation of their warehousing business where such sales are numerous and a substantial amount and where the selling of such secondhand property is a regular and continuous practice. Where such sales of secondhand property are in such number that they might be considered casual, isolated or accommodation sales, they are not required to be reported in sales tax returns filed with this department.

117-320 Use Tax

The use tax is imposed on the storage, use, or other consumption in this State of tangible personal property purchased at retail for storage, use, or other consumption in South Carolina.

117-320.1 Property Purchased and Used Without the State...Later Used in South Carolina.

Where property purchased in another state and used outside the state of South Carolina, is later brought into the state for use, storage or consumption in South Carolina, the use tax will apply unless the following conditions are conclusively established: (1) That the property when purchased was intended for a bona fide use outside the state of South Carolina; (2) That the first actual use of the property was outside the state of South Carolina; and (3) That the first actual use of the property was substantial and constituted the primary use for which the property was purchased.

The responsibility for proof rests upon the purchaser and until the above facts are established to the satisfaction of the department, it will be presumed that the use of such property in South Carolina is subject to a use tax.

(See, however, Section 12-36-1320 for a special imposition of the tax on transient construction equipment.)

117-320.2 Vehicles Replaced under Insurance Contracts

The use tax is due by the insured, measured by the purchase price of vehicles acquired out-of-state, whether acquired by the insured or the insurer under the terms of an insurance policy to replace destroyed or stolen vehicles.

117-321 Ships and Sales of Fuel, Lubricants and Mechanical Supplies to Ship.

Code Section 12-36-2120 exempts from the tax “vessels and barges of more than fifty tons burden” and “fuel, lubricants, and supplies for use or consumption aboard ships in intercoastal trade or foreign commerce.” This exemption for supplies does not exempt or exclude from the tax the sale of materials and supplies used in fulfilling a contract for the painting, repair, or reconditioning of ships and other watercraft.

117-321.1 Sales of Fuel, Lubricants and Mechanical Supplies

Code Section 12-36-2120 exempts from payment of sales or use taxes the sale or use of fuels, lubricants and supplies for use or consumption aboard ships in intercoastal trade between ports of the state of South Carolina and ports in other states of the United States or its possessions, or in foreign commerce between ports in the state of South Carolina, and ports in foreign countries; provided, however, that nothing herein shall be construed to exempt or exclude from the tax herein levied, that gross proceeds of the sale or sales of materials and supplies to any person for use in fulfilling a contract for the painting, repair or reconditioning of vessels, barges, ships and other watercraft.

It will be noted that the exemption does not apply to sales to fishing craft, tugs, vessels, or other watercraft not used in trade or commerce between South Carolina ports and ports of other states or foreign countries.

This exemption has been held to include any waters on the seacoast which are without the boundaries of the low water mark and would include waters of sea in small harbors and roadstands enclosed by narrow headlands and promontories. This ruling has been interpreted not to include the inland waterway.

You will note that the proviso contained in the section outlined above renders subject to the tax the sale or use of materials and supplies to any person for use in fulfilling a contract for the painting, repairing, or reconditioning of vessels, etc. Any person under contract for the purposes as outlined above must pay to his supplier sales or use tax, whichever is applicable, on the purchases of tangible personal property for use in fulfilling such a contract unless such person is engaged in a dual type business in which case the tax applies on the withdrawal for use.

117-321.1 Dry Dock.

A dry dock is subject to the sales or use tax, whichever applies. A dry dock is not a “vessel” nor is it a “barge” exempted from the sales or use tax.

272 FINAL REGULATIONS

117-322 Casual and Isolated Sales

Casual or isolated sales by persons not engaged in the business of selling tangible personal property at retail are not subject to the sales or use tax.

For purposes of administering this regulation, the term "casual" means occurring, encountered, acting or performed without regularity or at random. The term "occasional" and the term "isolated" mean occurring alone or once, an incident not likely to recur, sporadic.

117-323 Exemption of the Gross Proceeds of the Sale of Combustible Heating Material or Substances Used for Residential Purposes

Section 12-36-2120(33) exempts the gross proceeds of the sale of electricity, natural gas, fuel oil, coal or any other such combustible heating material or substance used for residential purposes.

For the purposes of the exemption, the term "residential purposes" as used in Section 12-36-2120(33), is construed to mean any space or area occupied by one or more individuals with the intent that such space or area serves as a residence, house, dwelling or abode. Included in the exemption are single family houses, duplexes, condominium units, apartments and mobile homes of a permanent type used by a person or persons as a place of residence, house, dwelling or abode. All sales to such locations would be exempt.

Electricity, natural gas, fuel oil, coal or any other type of combustible heating materials centrally metered or delivered to a central storage tank (or area) to duplexes, condominium units, apartments or mobile homes of a permanent type, and billed as such, would be considered as used for residential purposes and exempt.

Excluded from the exemption are hotels, motels, dormitories, nursing homes, summer camps, resort lodges and other dwellings of a temporary or transient nature. All sales to such locations would be taxable.

117-324 Dual Business

Operators of businesses who are both making retail sales and withdrawing for use from the same stock of goods are to purchase at wholesale all of the goods so sold or used and report both retail sales and withdrawals for use under the sales tax law.

This ruling applies only to those who actually carry on a retail business having a substantial number of retail sales and does not apply to contractors, plumbers, repairmen, and others who make isolated or accommodation sales and who have not set themselves up as being engaged in selling. Where only isolated sales are made, tax should be paid on all of the taxable property purchased with no sales tax return being required of the seller making such isolated or "accommodation" sales.

117-325 Bulk Sales

The Bulk Sales Statute makes it unlawful for any merchant, co-partnership or corporation engaged in the business of buying and selling merchandise, while indebted to any person or corporation, to sell any property used in connection with the business in bulk, or to sell the major portion thereof except in the ordinary course of trade, or in the regular prosecution of the seller's business with the intention of ceasing to conduct the business in the same manner and at the same place as therefore conducted without:

- (1) first making a full and complete inventory of the property proposed to be sold; and
- (2) making under oath a true and correct schedule of all creditors;
- (3) or if the seller asserts that he is not indebted, he must make an affidavit to this effect and deliver it with the inventory to the purchaser.

Ten days before sale is consummated and before purchaser takes possession, the purchaser is required to join in giving notice to each creditor shown on the schedule.

The Statute further provides that if the seller fails to make the required inventory, or if the inventory fails to show the true value of goods, or if the seller fails to make a true schedule of creditors and purchaser shall have knowledge of that fact, or if the seller asserts that there are no debts against him, if the plaintiff shall fail to require the affidavit outlined above, or if the seller and purchaser fail to give notice to each creditor named in the schedule, or if such notice shall not correctly state the amount of property proposed to be sold and the consideration to be paid for it and the time and manner of making the same, the sale shall prima facie be presumed to be fraudulent and void as against the creditors of the seller and any property used in connection with the business, or any part thereof found in the hands of the purchaser shall be liable to creditors. In the event any property shall be withdrawn by the purchaser, then the purchaser shall himself become personally liable to the creditors of the seller to the extent of the value of such property.

The Statute provides that the bulk purchaser and seller must keep in their possession exact copies of the inventory and schedule for a period of six (6) months and requires that the same shall be open to inspection of the creditors of the seller.

117-326 Savings and Loan Associations

Federal and State savings and loan associations and State building and loan associations are liable for the South Carolina use tax on purchases of tangible personal property for use, storage or consumption in this State. Conversely, licensed retailers are liable for the sales tax on all sales to such establishments.

117-327 Leased Departments

Where a store has leased departments operated by other persons, each such person operating a leased department shall make a separate return, if he keeps his own books and makes his own collections on accounts.

Where the store leasing such department keeps the books and makes collections for the leased department the store may, as agent for the lessee, make returns for such leased department and pay the taxes due. Note, however, the lessee shall not be relieved of his liability until the amount due has been paid. This method of accounting for the tax is authorized only by special permission of the Department of Revenue.

Where the store makes returns as agent for leased departments, it shall make separate returns for each department leased or shall make a consolidated return for both its business and the leased departments using "Schedule of Locations" to show a breakdown of gross proceeds of sales and other required information relating to its business and relating to each leased department. In any case, the lessor must obtain the permission of the Department of Revenue to make returns for his lessee.

117-328 Radio and TV Stations

274 FINAL REGULATIONS

Code Section 12-36-2120(26) exempts from the tax the sale of "all supplies, technical equipment, machinery and electricity sold to radio and television stations, and cable television systems, for use in producing, broadcasting or distributing programs. For the purpose of this exemption, radio, and television stations, and cable television systems are deemed to be manufacturers."

In light of the last sentence hereinabove, another statutory exemption (Code Section 12-36-2120(17)) is available. It reads that there is exempted from the measure of the tax levied, assessed or payable, "The gross proceeds of the sale of ...machines used in ...compounding, processing and manufacturing of tangible personal property; provided that the term 'machines,' as used in this article, shall include the parts of such machines, attachments and replacements therefor which are used, or manufactured for use, on or in the operation of such machines and which are necessary to the operation of such machines and are customarily so used; but this exemption shall not include automobiles or trucks..."

An AM radio station is defined as a broadcasting station licensed by the Federal Communications Commission for the transmission of radiotelephone emissions primarily intended to be received by the general public and operated on a channel in the band 535-1605 kc/s. An FM radio station, including non-commercial educational radio stations, would come within the same definition except that it is operated on a channel in the band 88.1-107.9 mc/s. A television broadcasting station would also come within the same definition except that it is licensed to transmit both visual and aural radiotelephone emissions and is to be operated in the 54-890 mc/s frequency.

Sales of electricity to radio and television stations for use directly in producing programs and in broadcasting, and to provide necessary lighting therefor, are exempted from the sales and/or use tax. Also, electricity to operate air conditioning machinery necessary to the operation of exempt technical equipment and machinery and for live telecast.

Sales of electricity for any other purpose are subject to the tax, such as, but not limited to, electricity used in administrative offices, supervisory offices, parking lots, storage warehouses, maintenance shops, safety control, comfort air conditioning, elevators, housekeeping equipment and machinery, cafeterias, canteens, first aid rooms, supply rooms, water coolers, drink boxes and unit heaters.

The exemption applies to all purchases or rentals of supplies for use directly in the preparation of programs and in broadcasting, to include flash bulbs, paper supplies, stage properties when customarily re-used, such as stock articles of furniture and equipment, props (including materials from which props are fabricated), film, recording tape, artists supplies, chemicals for use in developing films, syndicated and feature films, phonograph records, transcriptions, script services, sheet music, syndicated tape and transcribed programs.

The term "technical equipment and machinery" is defined as specialized equipment and machinery peculiar to the industry when purchased for use directly in preparing programs or broadcasting. The term shall likewise include replacement parts and attachments therefor, and power wiring or cable connecting exempt technical equipment and machinery when such wiring is not built into and a part of a building or structure.

Examples of exempt technical equipment and machinery used in programming are timers, splicers, viewers, sound readers, projectors, screens, editing tables and lighting boards, darkroom equipment and machinery used for developing film for use in preparing programs, and cameras, recorders and mobile equipment and machinery (not including automobiles and trucks) used by station employees in newsgathering and in transmission.

Examples of studio technical equipment and machinery are: For radio stations, turntables, microphones, audio consoles, tape recorders, headphones and speech input equipment.

For television stations, all of the foregoing, and in addition, video switching equipment, cameras, film chains, slide projectors, film projectors, studio lighting and studio dimmer or light control boards.

Transmission equipment consists of AM, FM, and TV transmitters complete, to include coaxial cables or transmission lines connecting antennas to transmitters.

Antenna equipment consists of the antenna proper, not including towers and lights. (Note, however, when the tower is the antenna, as in AM radio, it is deemed to be exempt technical equipment.)

Purchases of broadcast testing machinery used primarily for the purpose of maintaining audio or visual transmission quality are not subject to the tax.

Machines, including typewriters, purchased for use primarily in producing program logs are exempted from the tax.

Machinery purchased for use in fabricating backdrops or props is not subject to the tax.

Subject to the tax are purchases of standard or stock articles of office equipment, such as desks, chairs, typewriters, billing machines, filing cabinets, film storage cabinets and general office supplies used in billing customers and for general office use; machinery, equipment and supplies (not including, however, tubes and replacement parts) for use in repairing technical equipment or machinery; and all purchases of building materials for use in constructing a building or structure, to include soundproofing materials for studios, radio or television towers (except as indicated hereinabove), plumbing fixtures, pipe, wiring, structural foundations (even though for exempt equipment or machinery) and air conditioning ductwork. (Note, however, that air conditioning machinery necessary to the production of live telecast and for the proper functioning of exempt technical equipment and machinery is not subject to the tax.)

A tax is due, measured by the purchase price of all items of tangible personal property used in furnishing wired music, including, but not limited to, songs, speeches, and recordings of music. Also, properties used for closed circuit television. Proceeds derived from the furnishing of such services are not subject to the tax.

117-329 Communications

The gross proceeds accruing or proceeding from the business of providing or furnishing the ways or means for transmission of the voice or messages is construed to mean all charges for local service, including charges for equipment furnished by the seller or supplier of such service and all receipts for local calls made from coin operated telephones.

Not subject to the tax are: amortization charges for installing facilities beyond prescribed limits, restoration of service charges, attachment privileges to poles, charges for colored telephones and retractable cords (a one-time charge), charges on a cost basis for dial service between exchanges, toll charges between telephone exchanges (long distance), charges for all telegrams (local or otherwise), and charges representing Federal Communications taxes (excise taxes).

117-330 Automatic Data Processing

Automatic Data Processing Equipment--Hardware

Receipts from the sale or lease of automatic data processing equipment are subject to the sales or use tax. Also includible in the tax base are charges for the sale or lease of assembler, compiler, utility and other prewritten programs furnished with such equipment.

276 FINAL REGULATIONS

Automatic Data Processing Programs--Software

A computer program is the complete sequence of automatic data processing instructions necessary to enable automatic data processing equipment to function in resolving a particular problem. These instructions, commonly referred to as software, may be recorded on or in paper or magnetic tape, cards, disc or drum or may consist of written procedures such as program instructions listed on coding sheets. Programs are, in essence, the parts, attachments or instructions necessary to enable personnel to produce the results desired from the automatic data processing system.

Such programs may be prewritten (canned) or custom designed for a particular installation.

Prewritten Programs

The tax applies to total charges for coding, punching or otherwise reproducing prewritten programs including charges for the tapes or other properties when furnished by the seller or reproducer.

The temporary transfer of possession of a program for a consideration for the purpose of direct use by the customer or to be reproduced by the customer on or into tapes or other properties is a lease of tangible personal property subject to the tax on the total amount paid even though the consideration may be labeled a license fee or royalty payment; and even though royalty payments or payments for a license to use may be paid long after the original programs are returned to the seller.

Custom Programs

Custom programs are programs prepared to the special order of a customer, the gross proceeds therefrom being subject to the tax. Also considered to be custom programs are sales of programs developed through modification of existing prewritten programs to meet a customer's specific needs. Charges to modify and adapt these programs to a customer's equipment (including testing) or translating a program to a language compatible with a customer's equipment are services that are a part of the sale price of tangible personal property and likewise subject to the tax.

117-331 Airport Fixed Based Operators

Airport fixed base operators do business in a number of ways. In addition to making sales of new and used aircraft, charter service is available, in some instances aircraft are available for lease or rental or flight instruction, and gasoline, lubricating oils and greases and repair services are generally sold.

Only aircraft purchased for resale or rental may be purchased tax free as for resale.

When an aircraft is withdrawn for use primarily in flight instruction or charter service a tax is due measured by the reasonable and fair market value (purchase price) of the aircraft and a tax is also due when the aircraft is subsequently sold.

Conversely, when an aircraft purchased for resale is regularly demonstrated for that purpose and also used for charter, instruction, or for the private use of the owner, the tax may be paid on the value of the aircraft (purchase price), or the tax base may be arrived at by multiplying the actual number of flight hours by fifty percent (50%) of the posted hourly solo rental rate. By electing to pay a tax on the value of the aircraft withdrawn for demonstration purposes a person may reduce his tax liability on a replacement demonstrator up to the amount realized on the sale of the used demonstrator.

In general, the following would be for application:

1. Sales. All sales of new and used aircraft are subject to the tax when delivered to customers in South Carolina. When aircraft are purchased for use outside this State the tax likewise applies unless the seller, as a condition of the sale, delivers the aircraft to customers at points outside this State. The most acceptable proof of transportation outside the state would be a trip ticket signed by the seller's delivery agent and showing also the signature and address of the person outside this State who received the delivered aircraft.
2. Rental of aircraft. Proceeds derived from lease or rental of aircraft are subject to the tax.
3. Flight instruction. Receipts from courses of instruction given by base operators to students seeking private, commercial, instrument and/or instructor's licenses are not subject to the sales tax. Included in such exempt services are receipts from dual and solo flights which are a part of a course of instruction.
4. Charter service. No tax is due on charges made for charter service. Additionally, no tax would be due on withdrawals of aircraft for use in charter flights originating and terminating in states other than South Carolina.
5. Sales of gasoline for use in aircraft are subject to the tax.
6. Sales of lubricating oils and greases are subject to the tax. Charges made for lubricating services are not taxable, the tax being paid on the value of the lubricant or grease used in furnishing this service.
7. Repair service.
 - a. No tax is due on the purchase or withdrawal of parts used to repair or recondition aircraft for sale. Likewise, no tax is due on repairs by a person electing to report use on the basis of flight hours.
 - b. No tax is due on parts withdrawn for use in replacing parts under written warranty contracts given without charge to the purchaser at the time of original purchase, provided the tax was paid on the sale of the part found to be defective or on the sale of the property of which the defective part was a component, and provided no charge for labor or materials is made to the warrantee.
 - c. All other proceeds derived from the sale of repair parts and service are subject to the tax; provided, however, that where a separation is made between the sale of the parts and the sale of the service, the tax is due only on the sale of the repair parts. The invoice to the customer must show this separation.
8. Rental of hanger or tie space. No tax.

117-332 Medicines, Prosthetic Devices and Hearing Aids

Code Section 12-36-2120(28) exempts from the sales and use taxes:

- (a) medicines and prosthetic devices sold by prescription, prescription medicines and therapeutic radiopharmaceuticals used in the treatment of cancer, lymphoma, leukemia, or related diseases, including prescription medicines used to relieve the effects of any such treatment, and free samples of prescription medicine distributed by its manufacturer and any use of these free samples;
- (b) hypodermic needles, insulin, alcohol swabs, blood sugar testing strips, monolet lancets, dextrometer supplies, blood glucose meters, and other similar diabetic supplies sold to diabetics under the authorization and direction of a physician;
- (c) medicine donated by its manufacturer to a public institution of higher education for research or for the treatment of indigent patients; and

278 FINAL REGULATIONS

(d) dental prosthetic devices.

To assist in the administration of this exemption, the Department has adopted definitions for the terms “medicine” and “prosthetic devices” as follows:

“Medicine” - a substance or preparation used in treating disease.

“Prosthetic Device” - an artificial device to replace a missing part of the body.

The sale of prescription lenses that replace a missing part of the eye are exempted from the tax, as for example eyeglasses prescribed for a person whose natural lenses have been surgically removed.

Eyeglasses, contact lens, hearing aids and orthopedic appliances, such as braces, wheelchairs and orthopedic custom-made shoes, do not come within the exemption at Code Section 12-36-2120(28). However, sales of hearing aids are exempt pursuant to Code Section 12-36-2120(38).

Hypodermic needles, insulin, alcohol swabs, blood sugar testing strips, monolet lancets, dextrometer supplies, blood glucose meters, and other similar diabetic supplies sold to diabetics are only exempt if sold pursuant to the written authorization and direction of a physician.

117-333 Donors and Goods Given Away for Advertising Purposes

Donors of tangible personal property are regarded as consumers thereof, and the tax applies to the gross proceeds from the sale of the property to them. Gross proceeds from the sale of goods which are to be given away for advertising purposes are taxable.

Purchasers of property to be awarded as prizes, the winning of which depends upon chance or skill, are regarded as the consumers thereof, and the tax applies to the gross proceeds from the sale of such property to them. The operator of a game of skill, or a game of chance, is regarded as the consumer of the property used in connection with such operations, and the tax applies to the gross proceeds from sales of tangible personal property to the operator.

117-334 Interstate Commerce

(1) Goods coming into this State. When tangible personal property is purchased for use or consumption in this State and (1) the seller is engaged in the business of selling such tangible personal property in this State for use or consumption and (2) delivery is made in this State, such sale is subject to the sales tax. Such sale is taxable regardless of the fact that the purchaser's order may specify that the goods are to be manufactured or procured by the seller at a specified point outside this State and shipped directly to the purchaser from the point of origin.

If the conditions above are met it is immaterial (1) that the contract of sale is closed by acceptance outside the State or (2) that the contract is made before the property is brought into the State. Delivery is held to have taken place in this State (1) when physical possession of the tangible personal property is actually transferred to the buyer within this State or (2) when the tangible personal property is placed in the mails at a point outside this State directed to the buyer in this State or placed on board a carrier at a point outside this State (FOB or otherwise) and directed to the buyer in this State.

Engaging in business in this State shall include any of the following methods of transacting business: maintaining directly, indirectly, or through a subsidiary, an office, distribution house, sales house, warehouse or other place of business or by having an agent, salesman or solicitor operating within the State under the authority of the seller or its subsidiary.

(2) Goods shipped from this State. When tangible personal property is sold within the State and the seller is obligated to deliver it to the buyer or to an agent of the buyer at a point outside of the State or to deliver it to a carrier or to the mails for transportation to the buyer or to an agent of the buyer at a point outside this State, the retail sales tax does not apply provided the property is not returned to a point within the State. The most acceptable proof of transportation outside the State will be:

- (a) A way-bill or bill of lading made out to the seller's order and calling for delivery; or
- (b) An insurance receipt or registry issued by the United States Postal Department, or a Post Office Department receipt Form 3817; or
- (c) A trip sheet signed by the seller's delivery agent and showing the signature and address of the person outside this State who received the goods delivered.

However, where tangible personal property pursuant to a sale is delivered in this State to the buyer or to an agent of his other than a common carrier the retail sales tax applies notwithstanding that the buyer may subsequently transport the property out of the State.

117-335 Manufactured Homes and Modular Homes

Section 12-36-2110(B) concerns the method of taxation and the maximum tax for manufactured homes. The term "manufactured home" as used in this section is defined in Code Section 40-29-20 as "a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width, or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained in it."

Section 12-36-2120(34) exempts 35% of the gross proceeds of the sale of modular homes as defined in Section 31-17-20. The term "modular home" as used in Section 12-36-2120(34) means "a manufactured single family dwelling or an integral part over thirty-five feet in length, or over eight feet in width, so constructed that it may be transported from one site to another, temporarily or permanently affixed to real estate, made up of one or more components, and constructed with the same or similar electrical, plumbing, heating and sanitary facilities as on-site constructed housing."

The sales of portable classrooms and storage type manufactured buildings, recreational vehicles (RVs), travel trailers, campers, manufactured condominium and motel units, and like tangible personal property are not considered the sales of manufactured homes or modular homes.

117-335.1 Homes Built on a Permanent Chassis

Based on the above definitions of a "manufactured home" and a "modular home:"

(A) A factory-fabricated home built on a permanent chassis is a modular home for purposes of the sales and use tax if the structure is:

1. designed to be used as a single family dwelling; and
2. more than eight feet in width or thirty-five feet or more in length.

(B) A factory-fabricated home built on a permanent chassis is a manufactured home for purposes of the sales and use tax if the structure is:

280 FINAL REGULATIONS

1. designed to be used as a dwelling; and
2. eight or more feet in width or forty feet or more in length or three hundred and twenty or more square feet.

(C) A factory-fabricated home built on a permanent chassis meeting both the requirements in (A) and (B) above is a manufactured home for purposes of the sales and use tax.

(D) A factory-fabricated home built on a permanent chassis that does not meet either of the requirements in (A) or (B) above is neither a modular home nor a manufactured home for purposes of the sales and use tax.

This regulation deals solely with sales and use taxation. It intends no implication for licensing, building code requirements, zoning or other regulation of factory-fabricated homes.

117-336 Definition of the Term “Facility”

A “facility” is generally a single physical location, where a taxpayer’s business is conducted or where its services or industrial operations are performed. Where two or more distinct and separate economic activities are performed at a single physical location, each separate economic activity will be treated as a separate facility when: (1) each activity has its own separate and dedicated personnel; (2) separate reports can be prepared on the numbers of employees, their wages and salaries, sales, or receipts and expenses; (3) and employment and output are significant as to the activity. For purposes of item (2) above, it is irrelevant if separate reports are actually prepared, so long as separate reports can be prepared, this criteria is met.

Fiscal Impact Statement:

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