

SOUTH CAROLINA STATE REGISTER DISCLAIMER

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SOUTH CAROLINA STATE REGISTER

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THE LEGISLATIVE COUNCIL
of the
GENERAL ASSEMBLY

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

South Carolina State Register

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

STYLE AND FORMAT

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

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

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

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

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

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

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

Executive Orders are actions issued and taken by the Governor.

2005 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	1/14	2/11	3/11	4/8	5/13	6/10	7/8	8/12	9/9	10/14	11/11	12/9
Publishing Date	1/28	2/25	3/25	4/22	5/27	6/24	7/22	8/26	9/23	10/28	11/25	12/23

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.

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 South Carolina General Assembly Home Page: www.scstatehouse.net

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2886	SR29-1	Pilot and Apprentice Age Limitations and Pilot Registration	1/11/05	LLR: Commissioners of Pilotage
2887	SR29-1	Residential Builders Commission	1/11/05	LLR: Residential Builders Commission
2753	SR29-2	LIFE Scholarship Program	1/15/05	Commission on Higher Education
2889	SR29-2	Barrier Free Design, Building Codes Council	1/17/05	LLR: Building Codes Council
2890	SR29-2	Chapter Revisions	1/17/05	LLR: Manufactured Housing Board
2873	SR29-2	Air Pollution	1/30/05	Department of Health and Envir Control
2800	SR29-3	Environmental Protection Fees	2/27/05	Department of Health and Envir Control
2905	SR29-4	Credit for Reinsurance	3/14/05	Department of Insurance
2900	SR29-4	Student Attendance	3/26/05	Board of Education
2897	SR29-4	State Primary Drinking Water	3/28/05	Department of Health and Envir Control
2908	SR29-4	Continuing Insurance Education	4/03/05	Department of Insurance
2906	SR29-4	Repeal Video Poker Regulations	4/03/05	Department of Revenue
2907	SR29-4	ABL - Drive Thru Prohibited	4/03/05	Department of Revenue
2909	SR29-4	Adoption of National Explosives Standards	4/03/05	LLR: Office of State Fire Marshal
2899		Certification Program for Public Librarians	4/10/05	State Library
2903		Total Maximum Daily Loads for Pollutants in Water	4/27/05	Department of Health and Envir Control
2928		Spec Project Stds of Tidelands and Coastal Waters -Docks	5/11/05	Department of Health and Envir Control
2929		State of Policy; Spec Proj Stds of Tidelnds Coastl Wtrs - Marinas	5/11/05	Department of Health and Envir Control
2930		Hotel-Motel Sanitation	5/11/05	Department of Health and Envir Control
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2933		Wildlife Management Areas	5/11/05	Department of Natural Resources
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2951		Inactive or Retired Status Licenses	5/11/05	LLR: Long Term Health Care Administrators
2931 R.20	SR29-4	Chapter Revision	5/11/05	LLR: Environmental Certification Board
2901		Child Care Centers Licensing Regulations	5/16/05	Department of Social Services
2940		Personnel Qualifications, Duties and Workloads	5/18/05	Board of Education
2941		Assisting, Developing, and Evaluating Professional Teaching	5/18/05	Board of Education
2949		Examination of Dentists and Dental Hygienists	5/18/05	LLR: Board of Dentistry
2950		Re-examination	5/18/05	LLR: Board of Dentistry
2925		Licensing Group Child Care Homes	5/19/05	Department of Social Services
2924		Child Care Centers Operated by Churches or Religious Entities	5/19/05	Department of Social Services
2943		Air Pollution Control Regulations and Standards	5/20/05	Department of Health and Envir Control
2944		Infectious Waste Management	5/20/05	Department of Health and Envir Control
2938		Pest Control Regulations	5/26/05	Clemson University, State Crop Pest Comm
2957		Motorist Insurance Identification Database	6/02/05	Department of Motor Vehicles
2946		South Carolina HOPE Scholarship	6/02/05	Commission on Higher Education
2948		Palmetto Fellows Scholarship Program	6/02/05	Commission on Higher Education
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2939		Designation of Plant Pests	6/07/05	Clemson University, Crop Pest Commission
2955		Motorist Insurance Identification Database (Repeal)	6/08/05	Department of Public Safety
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2972		Transportation of Unmanufactured Forest Products	8/05/05	Department of Public Safety
2971		Assessment Program	8/13/05	Board of Education
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2927	4/5/05	The Practice of Selling and Fitting Hearing Aids	5/20/05	Department of Health and Envir Control
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2967		Workers' Compensation Advisory Board		Department of Insurance
2801		Individual Sewage Treatment and Disposal Systems		Department of Health and Envir Control

2 EXECUTIVE ORDERS

2005-09

WHEREAS, South Carolina needs a competitive and skilled workforce to compete in the global economy; and

WHEREAS, many of South Carolina's businesses and industries are at a competitive disadvantage because many of their existing and future employees do not possess the educational skills and abilities to cope with demands placed on them by changes in the workforce; and

WHEREAS, the Workforce Investment Act of 1998 (WIA) provides significant funding to South Carolina in an effort to help increase employment retention and earnings of workers and increase occupational skill attainment of workers, and as a result, improve the quality of the workforce, and enhance productivity and competitiveness; and

WHEREAS, because WIA is one of the most important tools the state has to tackle these problems it should be used in ways that are tightly coordinated with the South Carolina Department of Commerce's (Commerce) efforts to bring more high-paying jobs to South Carolina and specifically used for training programs that relate to the industries and businesses that Commerce has targeted; and

WHEREAS, positioning WIA within the governor's cabinet at Commerce gives the governor more direct management of an important resource to help increase employment in South Carolina.

NOW, THEREFORE, by virtue of the powers conferred upon me by Public Law 105-22, I hereby transfer the administration of the Workforce Investment Act program currently at the South Carolina Employment Security Commission to the South Carolina Department of Commerce in an effort to increase accountability and better coordinate the WIA program with the state's economic development activities.

FURTHER, I direct Commerce and the Employment Security Commission to work together openly and cooperatively to ensure a successful transition of the WIA program.

Executive Order 94-04 is hereby amended.

This Order shall take effect July 1, 2005.

**GIVEN UNDER MY HAND AND THE GREAT
SEAL OF THE STATE OF SOUTH CAROLINA,
THIS 12th DAY OF APRIL, 2005.**

MARK SANFORD
Governor

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

In accordance with Section 44-7-200(C), Code of Laws of South Carolina, the public is hereby notified that a Certificate of Need application has been accepted for filing and publication April 22, 2005, 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 Florence County

Purchase of a “da Vinci Robotic Surgical System” for the hospital surgery department.
 Carolinas Hospital System
 Florence, South Carolina
 Project Cost: \$1,049,400

Affecting Laurens County

Construction to establish a freestanding ambulatory surgical facility with two (2) general operating rooms (ORs).
 The Surgery and Laser Center at Professional Park, LLC
 Clinton, South Carolina
 Project Cost: \$3,750,958

Establish an outpatient narcotic treatment program (Methadone Treatment Center) to be located at Lot 5, Professional Park Road, Clinton, South Carolina 29325.
 Laurens Treatment Associates
 Clinton, South Carolina
 Project Cost: \$262,000

Affecting Richland County

Replacement of Positron Emission Tomography (PET) unit with Positron Emission Tomography/Computerized Tomography (PET/CT) unit.
 Palmetto Health Baptist
 Columbia, South Carolina
 Project Cost: \$2,788,063

Affecting York County

Construction of 64-bed acute care hospital to include a Magnetic Resonance Imaging (MRI) unit, a Computed Tomography (CT) scanner, and one diagnostic cardiac catheterization laboratory located off of I-77, Exit 82 at the northwest quadrant of the intersection of Hwy. 21 (Cherry Road) and Pump Station Road in Rock Hill, South Carolina.
 Carolinas HealthCare System – York (true name t/b/d)
 Rock Hill, South Carolina
 Project Cost: \$72,987,261

4 NOTICES

Construction of a 64-bed acute care hospital to include 12 skilled nursing beds for a total of 76 licensed beds with provisions for a Magnetic Resonance Imaging (MRI) unit, one diagnostic cardiac catheterization laboratory, a Computed Tomography (CT) scanner, and a Linear Accelerator located off of I-77 at Gold Hill Road in Fort Mill, South Carolina.

Lake Wylie Regional Medical Center

Fort Mill, South Carolina

Project Cost: \$78,422,700

Replacement of a Single Slice Computerized Tomography (CT) scanner with a Sixteen (16) Slice CT scanner.

Piedmont Medical Center

Rock Hill, South Carolina

Project Cost: \$1,383,820

Construction of 64-bed acute care hospital to include a Magnetic Resonance Imaging (MRI) unit, a Computed Tomography (CT) scanner, and one diagnostic cardiac catheterization laboratory located off of I-77 at Sutton Road in Fort Mill, South Carolina.

Presbyterian Hospital-York

Fort Mill, South Carolina

Project Cost: \$83,513,000

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 April 22, 2005. "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 Charleston County

Construction for the addition of sixty-three (63) general acute care beds (50 additional beds and 13 beds transferred from Roper Hospital) for a total licensed bed capacity of 204 general beds at St. Francis Xavier with 401 general beds and 39 rehabilitation beds remaining at Roper Hospital.

Bon Secours St. Francis Xavier Hospital

Charleston, South Carolina

Project Cost: \$25,080,000

Conversion of fourteen (14) nursing home beds to general acute care beds resulting in a total of 94 general acute care beds.

Summerville Medical Center

Charleston, South Carolina

Project Cost: \$0.00

Affecting Florence County

Purchase of a "da Vinci Robotic Surgical System" for the hospital surgery department.

Carolinas Hospital System

Florence, South Carolina

Project Cost: \$1,049,400

Affecting Richland County

Replacement of Positron Emission Tomography (PET) unit with Positron Emission Tomography/Computerized Tomography (PET/CT) unit.

Palmetto Health Baptist
Columbia, South Carolina
Project Cost: \$2,788,063

Affecting Spartanburg County

Replacement of twenty-eight (28) existing licensed general acute care beds within the hospital to space to be renovated on the third (3rd) floor of the Gibbs Regional Cancer Center with no change in the licensed bed capacity at the hospital.

Spartanburg Regional Medical Center
Spartanburg, South Carolina
Project Cost: \$4,718,493

PUBLIC NOTICE

The South Carolina State Health Planning Committee will hold public hearings on the general hospital bed need section, pages II-4 through II-19, of the 2004-2005 South Carolina Health Plan at the following times and locations:

Monday, May 23, 2005, 11:00 a.m. until 12:00 noon, second floor conference room of the Heritage Building, 1777 St. Julian Place, Columbia, South Carolina;

Tuesday, May 24, 2005, 11:00 a.m. until 12:00 noon, Greenville County Council Chambers, 301 University Ridge, County Square, Greenville, South Carolina;

Wednesday, May 25, 2005, 11:00 a.m. until 12:00 noon, Florence Health Department Auditorium, 145 East Cheves Street, Florence, South Carolina;

Thursday, May 26, 2005, 11:00 a.m. until 12:00 noon, City of North Charleston Council Chambers, 4900 LaCross Road, North Charleston, South Carolina;

The State Health Planning Committee is soliciting comments on the general hospital bed need section of the Plan and prefers to receive these comments in writing so all members of the State Health Planning Committee can review them.

Written comments will be received through May 27, 2005. The Plan is available for public review at the South Carolina Department of Health and Environmental Control, 1777 St. Julian Place, Suite 201, Columbia, SC, the State Library, 1500 Senate Street, Columbia, SC and all State Depository Libraries.

Comments on this section of the Plan may be presented at the public hearings or submitted to the S.C.State Health Planning Committee, S.C. Department of Health and Environmental Control, Division of Planning and Certification of Need, 2600 Bull St., Columbia, SC 29201 through May 27, 2005. The FAX number is 803-545-4579. For additional information, call (803) 545-4200.

6 NOTICES

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 May 30, 2005 to:

Contractor Certification Program
South Carolina Department of Health and Environmental Control
Underground Storage Tank Program
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

ECOVAC Services
KLM Environmental

Class II

DEPARTMENT OF LABOR, LICENSING AND REGULATION BUILDING CODES COUNCIL

NOTICE OF GENERAL PUBLIC INTEREST

Notice is hereby given that, in accordance with Section 6-9-40 of the 1976 Code of Laws of South Carolina, as amended, the South Carolina Building Codes Council intends to update the National Electrical Code, 2002 Edition to the National Electrical Code, 2005 Edition.

The Council specifically requests comments concerning sections of this edition, which may be unsuitable for enforcement in South Carolina. Written comments may be submitted to Gary F. Wiggins, Board Administrator, at 110 Centerview Drive, 1st Floor, Columbia, SC, 29211-1329, (803) 896-4620, on or before October 20, 2005.

The South Carolina Building Codes Council will accept comments for 180 days and, if appropriate, convene a study committee pursuant to Section 6-9-40 for the consideration of the comments regarding the 2005 Edition of the National Electrical Code.

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

NOTICE OF GENERAL PUBLIC INTEREST

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

1. International Building Code, 2003 Edition
2. The original promulgating authority for this code is:
International Code Council
900 Montclair Road
Birmingham, Alabama 35213-1206
3. This code is referenced by:
South Carolina Code of Laws Section 23-9-60
South Carolina Rules and Regulations 71-8300.9(A)

The Office of State Fire Marshal specifically requests comments concerning sections of these editions which may be unsuitable for enforcement in South Carolina. Written comments may be submitted to Michael Platt at 141 Monticello Trail, Columbia, SC 29203, by fax at 803-896-9806, or by e-mail to plattp@llr.sc.gov.

If no comments are received within sixty (60) days of publication of this notice, the Office of State Fire Marshal will promulgate this latest edition without amendment.

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

NOTICE OF GENERAL PUBLIC INTEREST

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

1. International Fire Code, 2003 Edition
2. The original promulgating authority for this code is:
International Code Council
900 Montclair Road
Birmingham, Alabama 35213-1206
3. This code is referenced by:
South Carolina Code of Laws Section 23-9-60
South Carolina Rules and Regulations 71-8301-3(A)

The Office of State Fire Marshal specifically requests comments concerning sections of these editions, which may be unsuitable for enforcement in South Carolina. Written comments may be submitted to Michael Platt at 141 Monticello Trail, Columbia, SC 29203, by fax at 803-896-9806, or by e-mail to plattp@llr.sc.gov.

8 NOTICES

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

NOTICE OF GENERAL PUBLIC INTEREST

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

1. National Fire Protection Association 99, Standard for Health Care Facilities, 2005 Edition
2. The original promulgating authority for this code is:
National Fire Protection Association
1 Batterymarch Park
Quincy, Massachusetts 02269
3. This code is referenced by:
South Carolina Rules and Regulations 71-8300.11(C)(4)

The Office of State Fire Marshal specifically requests comments concerning sections of these editions, which may be unsuitable for enforcement in South Carolina. Written comments may be submitted to Michael Platt at 141 Monticello Trail, Columbia, SC 29203, by fax at 803-896-9806, or by e-mail to plattp@llr.sc.gov.

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

NOTICE OF GENERAL PUBLIC INTEREST

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

1. National Fire Protection Association 11, Standard for Low, Medium, and High Expansion Systems,
2005 Edition
2. The original promulgating authority for this code is:
National Fire Protection Association
1 Batterymarch Park
Quincy, Massachusetts 02269
3. The code is referenced by:
South Carolina Rules and Regulation Section 71-8307.3(A)(9)

The Office of State Fire Marshal specifically requests comments concerning sections of these editions, which may be unsuitable for enforcement in South Carolina. Written comments may be submitted to Michael Platt at 141 Monticello Trail, Columbia, SC 29203, by fax at 803-896-9806, or by e-mail to plattm@llr.sc.gov.

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

NOTICE OF GENERAL PUBLIC INTEREST

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

1. National Fire Protection Association 12, Standard on Carbon Dioxide Extinguishing Systems, 2005 Edition
2. The original promulgating authority for this code is:
National Fire Protection Association
1 Batterymarch Park
Quincy, Massachusetts 02269
3. This code is referenced by:
South Carolina Rules and Regulations, Section 71-8307.3(A)(9)

The Office of State Fire Marshal specifically requests comments concerning sections of these editions, which may be unsuitable for enforcement in South Carolina. Written comments may be submitted to Michael Platt at 141 Monticello Trail, Columbia, SC 29203, by fax at 803-896-9806, or by e-mail to plattm@llr.sc.gov.

If no comments are received within sixty (60) days of publication of this notice, the Office of State Fire Marshal will promulgate this latest edition without amendment.

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

NOTICE OF GENERAL PUBLIC INTEREST

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

1. National Fire Protection Association 409, Standard on Aircraft Hangars, 2004 Edition
2. The original promulgating authority for this code is:
National Fire Protection Association
1 Batterymarch Park
Quincy, Massachusetts 02269
3. This code is referenced by:
South Carolina Code of Laws, Section 23-45-140

10 NOTICES

The Office of State Fire Marshal specifically requests comments concerning sections of these editions, which may be unsuitable for enforcement in South Carolina. Written comments may be submitted to Michael Platt at 141 Monticello Trail, Columbia, SC 29203, by fax at 803-896-9806, or by e-mail to plattm@llr.sc.gov.

If no comments are received within sixty (60) days of publication of this notice, the Office of State Fire Marshal will promulgate this latest edition without amendment.

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 May 5, 2005 at 2:00 p.m. at the S.C. Department of LLR, 1st floor, room 111, 110 Centerview Drive, Columbia, S.C., at which time interested persons will be given the opportunity to appear and present views on the occupational safety and health standards being considered for adoption, which are as follows:

In Subarticle 6 (General Industry and Shipyard Employment):

Revisions to 1910.103, 1910.134, 1910.142, 1910.151, 1910.217, 1910.219, 1910.268,
1910.1001, 1910.1003, 1910.1017, 1910.1018, 1910.1025, 1910.1027, 1910.1028, 1910.1029,
1910.1043, 1910.1044, 1910.1045, 1910.1047, 1910.1048, 1910.1051, 1915.1001.

In Subarticle 7 (Construction):

Revisions to 1926.60, 1926.62, 1926.307, 1926.1101, 1926.1127.

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 April 21, 2005. 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 April 21, 2005.

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

PLANNING EDUCATION ADVISORY COMMITTEE Statutory Authority: Article 9 Section 6.20-1330(E)

The South Carolina Planning Education Advisory Committee has approved the Orientation Program developed by the South Carolina Association of Counties (SCAC). Please contact Kathy Williams at SCAC at 1-800-922-6081 for further information

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 30

Statutory Authority: S.C. Code Ann. Sections 48-39-10 *et seq.* (Supp. 2004)
and Act 202 (April 2004)

Notice of Drafting:

The Department of Health and Environmental Control proposes to amend 23A S.C. Code Ann. Regulation 30-1(D), *Definitions*, and Regulation 30-12, *Specific Project Standards for Tidelands and Coastal Waters*, the Department's Coastal regulations related to permitting in the critical areas of the Coastal Zone.

Additionally, the Department proposes to amend Regulation 30-1 through 30-18, the Critical Area Permitting Regulations, to correct all references to the Administrative Law Court.

Interested persons should submit their views in writing to: Ms. 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 May 30, 2005, the close of the initial drafting comment period.

Synopsis:

The Department proposes to amend Regulation 30-1 and Regulation 30-12 pursuant to S.C. Code Ann. Sections 48-39-10 *et seq.* The proposed amendment will specify the Department's policies regarding bridging to marsh islands. This proposed amendment would provide clearly defined terms and specific standards to be utilized in the evaluation of permit applications for bridges to islands.

Additionally as a result of Act 202, which changed the name of the Administrative Law Judge division to Administrative Law Court (ALC), technical amendments to utilize the new name of the ALC are necessary throughout the critical area regulations.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61

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

Notice of Drafting:

The South Carolina Department of Health and Environmental Control (Department) is proposing to amend Section I – Definitions and Section II – Permit Requirements of Regulation 61-62.1, *Definitions and General Requirements*, and the South Carolina State Implementation Plan (SIP). Interested persons are invited to present their views in writing to Thomas J. Flynn, III, Regulatory Development Section, Bureau of Air Quality, 2600 Bull Street, Columbia, SC 29201. To be considered, written comments must be received no later than 5:00 pm on May 23, 2005, the close of the drafting period.

12 DRAFTING

Synopsis:

Regulation 61-62.1, *Definitions and General Requirements*, requires stationary sources planning to construct, alter or add to a source of air pollutants to first obtain a construction permit from the Department. This permitting program is generally referred to as the minor source permitting program to distinguish it from additional permitting requirements for major sources of air pollutants.

Currently, the permitting program is very broad and the Department requires air permits from a wide variety of sources. For many years, the Department has felt the need to review this program to ensure that we are meeting our goals of promoting and protecting the public health and the environment and doing so in the most efficient and effective manner. Thus, the Department is proposing to consider revisions to Sections I and II of Regulation 61-62.1, *Definitions and General Requirements*.

The proposed amendment will require legislative review.

DEPARTMENT OF LABOR, LICENSING AND REGULATION
OFFICE OF LABOR SERVICES
CHAPTER 71

Statutory Authority: 1976 Code Section 41-13-20

Notice of Drafting:

The South Carolina Department of Labor, Licensing, and Regulation, Office of Labor Services proposes to amend Regulations 71-3106 and 71-3107. Interested persons may submit comments to Mark Dorman, Administrator, Office of Wages and Child Labor, S.C. Department of Labor, Licensing and Regulation, Office of Labor Services, Post Office Box 11329, Columbia, S.C. 29211-1329.

Synopsis:

The S.C. Office of Labor Services proposes to amend current Regulations 71-3106 and 71-3107 to reflect recent amendments to 29 CFR Part 570. The proposed change will incorporate new language from the federal regulations governing child labor and will maintain the long standing state policy that state child labor regulations will not be more restrictive than applicable federal law.

DEPARTMENT OF REVENUE

Chapter 117

Statutory Authority: 1976 Code Section 12-4-320

Notice of Drafting:

The South Carolina Department of Revenue is considering amending SC Regulation 117-328 concerning the sales and use tax and radio and television stations to delete the last paragraph of the regulation. This paragraph concerns outdated "wired music." Such music is now transmitted via satellite and the charges for such transmissions, in the opinion of the Department, are subject to the tax under Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3)) which impose the sales tax and use tax on charges for the ways or means for the transmission of the voice or messages. In addition, the last sentence of the paragraph concerning the proceeds from wired music is in conflict with the provisions of Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3).

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, May 25, 2005.

Synopsis:

The South Carolina Department of Revenue is considering amending SC Regulation 117-328 concerning the sales and use tax and radio and television stations to delete the last paragraph of the regulation. This paragraph concerns outdated “wired music.” Such music is now transmitted via satellite and the charges for such transmissions, in the opinion of the Department, are subject to the tax under Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3)) which impose the sales tax and use tax on charges for the ways or means for the transmission of the voice or messages. In addition, the last sentence of the paragraph concerning the proceeds from wired music is in conflict with the provisions of Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3).

14 PROPOSED REGULATIONS

Document No. 2977
DEPARTMENT OF INSURANCE
CHAPTER 69

Statutory Authority: S.C. Code Sections 38-3-110(2), 38-71-530(b), 1-23-10 *et seq.*

69-46. Medicare Supplement Insurance

Preamble:

The Department proposes to amend Regulation 69-46 in order to comply with the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA). This will ensure that South Carolina can maintain certification of its regulatory programs. Furthermore, adoption of these proposed changes will bring the State's Medigap regulatory program into compliance with federal standards.

The proposed regulation is exempt from legislative review as it is being promulgated to comply with federal law.

Notice of Public Hearing and Opportunity for Public Comment:

The Administrative Law Judge Division will conduct a public hearing for the purpose of receiving oral comments on Thursday, May 26, 2005 at 1:00 p.m. at 1205 Pendleton Street, Columbia, South Carolina. Interested parties should submit their views in writing to: Melanie A. Joseph, Executive Assistant to the Director/Legislative Liaison, Post Office Box 100105, Columbia, South Carolina 29202-3105 on or before Friday, May 13, 2005.

Preliminary Fiscal Impact Statement:

No additional state funding is requested.

Statement of Need and Reasonableness:

The South Carolina Department of Insurance proposes to amend Regulation 69-46, Medicare Supplement Insurance, in order to comply with the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA). This will ensure that South Carolina can maintain certification of its regulatory programs. Furthermore, adoption of these proposed changes will bring the State's Medigap regulatory program into compliance with federal standards.

Text:

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

Document No. 2978
DEPARTMENT OF INSURANCE
CHAPTER 69

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

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

Preamble:

The South Carolina Department of Insurance proposes to create Regulation 69-57.1 in order to recognize, permit and prescribe the use of the 2001 Commissioners Standard Ordinary (CSO) Mortality Table in accordance with South Carolina Code Section 38-9-180 and Section 38-63-510 et seq. as well as Regulation 69-57, Valuation of Life Insurance Policies.

Notice of Public Hearing and Opportunity for Public Comment:

The Administrative Law Judge Division will conduct a public hearing for the purpose of receiving oral comments on Thursday, May 26, 2005 at 10:00 a.m. at 1205 Pendleton Street, Columbia, South Carolina. Interested parties should submit their views in writing to: Melanie A. Joseph, Executive Assistant to the Director/Legislative Liaison, Post Office Box 100105, Columbia, South Carolina 29202-3105 on or before Friday, May 13, 2005.

Preliminary Fiscal Impact Statement:

No additional state funding is requested.

Statement of Need and Reasonableness:

The proposed regulation is necessary in order to update Mortality Tables used in accordance with South Carolina law.

Text:

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

Statement of Rationale:

The basis for this regulation are tables developed by the American Academy of Actuaries and the National Association of Insurance Commissioners.

16 PROPOSED REGULATIONS

Document No. 2976
DEPARTMENT OF LABOR, LICENSING AND REGULATION
SOUTH CAROLINA OCCUPATIONAL HEALTH AND SAFETY REVIEW BOARD
CHAPTER 127

Statutory Authority: 1976 Code Section 41-15-610(a)

R.127-1.5 Representation of Parties and Intervenors.

Preamble:

The Occupational Health and Safety Review Board proposes to amend Regulation 127-1.5 to reflect changes since its promulgation.

Section-by-Section Discussion:

R.127-1.5 Representation of Parties and Intervenors

Adds sentences regarding representation by officers, full time employees, and attorneys. Attorneys must comply with all South Carolina Supreme Court requirements, including provisions for appearance *pro hac vice*.

Notice of Public Hearing and Opportunity for Public Comment:

Should a hearing be requested pursuant to Section 1-23-110(b) of the 1976 Code, as amended, such a hearing will be conducted at the Administrative Law Judge Court at 10:00 a.m. on Monday, June 6, 2005. Written comments may be directed to Joan Wilkie, Administrative Law Clerk, South Carolina Occupational Health and Safety Review Board, Department of Labor, Licensing, and Regulation, Post Office Box 11329, Columbia, South Carolina 29211-1329, no later than 5:00 p.m., on Monday, May 23, 2005.

Preliminary Fiscal Impact Statement:

There will be no cost incurred by the State or any of its political subdivisions.

Statement of Need and Reasonableness:

This statement of need and reasonableness was developed by staff analysis pursuant to S.C. Code Section 1-23-115(C).

DESCRIPTION OF REGULATION:

Purpose: The Board is updating the regulation to define specific requirements for representation.

Legal Authority: 1976 Code, Section 41-15-610(a)

Plan for Implementation: The revised regulations will take effect upon approval by the General Assembly and upon publication in the State Register. The Department will notify parties to contested cases of the revised regulation at the time their case is docketed and post the revised regulation on the agency's web site.

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

The proposed regulation will define specific requirements for representation, particularly in regard to attorney representation.

DETERMINATION OF COSTS AND BENEFITS:

No additional costs to protesting parties will result from these regulations, unless representation requirements are not followed. The protesting parties will benefit from the clarification of their responsibilities. The public will benefit from the effectiveness of the hearing process.

UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates concerning the regulation.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

This regulation will have no effect on the environment. This regulation contributes to the Board's function of protecting public health in the state of South Carolina.

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

There will be no detrimental effect on the environment and public health of this State if this regulation is not implemented.

STATEMENT OF RATIONALE:

The South Carolina Supreme has recently amended its Rule 404 governing the practice of law in this state, particularly concerning the conditions under which attorneys licensed in other states can appear before administrative tribunals. The Supreme Court action requires that this Board amend its rules to avoid misleading parties which appear before it and which choose to be represented by counsel not licensed in South Carolina. There were no scientific or technical basis relied upon in developing the regulation.

Text:

127-1.5. Representation of Parties and Intervenors

Any protesting party or intervenor may appear in person or through a representative. Parties may choose an officer or a full time employee as a representative. If a party chooses an attorney as a representative, the attorney must comply with all requirements of the South Carolina Supreme Court, including provisions for appearance pro hac vice. The representative of a party or intervenor shall be deemed to control all matters respecting the interest of such party or intervenor in the proceeding. It shall be the duty of the party or intervenor to notify, in writing, the Administrative Law Clerk of the Occupational Health and Safety Review Board and the Board member to whom the matter is assigned of the address of record of the party or intervenor or of the representative appearing for the party or intervenor.

18 EMERGENCY REGULATIONS

Filed: March 30, 2005, 9:05 am

Document No. 2979
DEPARTMENT OF NATURAL RESOURCES
CHAPTER 123

Statutory Authority: 1976 Code Sections 50-11-500, 50-11-510, 50-11-520, 50-11-530, 50-11-540, 50-11-544, 50-11-2200 and 50-11-2210

Emergency Situation:

These emergency regulations amend and supersede South Carolina Department of Natural Resources Regulation Number 123-51. These regulations set open and closed seasons, bag limits, and methods of taking turkey and define special use restrictions related to hunting and methods for taking wildlife on Department-owned Wildlife Management Areas. Because the hunting seasons on these areas start April 1, it is necessary to file these regulations as emergency.

HUNTING IN WILDLIFE MANAGEMENT AREAS

123-51. Turkey Hunting Rules and Seasons

1. Total limit of 5 turkey statewide per person, 2 per day gobblers only, unless otherwise specified. Total statewide and county bag limits include turkeys harvested on Wildlife Management Areas (WMAs). Small unnamed WMAs in counties indicated are open for turkey hunting. Turkey seasons and limits on DNR-owned lands and Wildlife Management Area lands are as follows:

AREA	DATES	LIMIT	Other Restrictions
Bonneau Ferry	April 1 – May 1	1/hunter	Hunting by public draw only. (closed to public access during hunts)
Draper	April 1 – May 1	2	Wed. and Sat. Only
Worth Mountain	April 1 – May 1	2	Wed. and Sat. Only

Statement of Need and Reasonableness:

Periodically additional lands are made available to the public through the Wildlife Management Area Program. Since existing regulations only apply to specific wildlife management areas, new regulations must be filed to establish seasons, bag limits and methods of hunting and taking of wildlife on these new WMAs as well as expanding use opportunities on existing WMAs. Amendments are needed to allow additional opportunity. Because some hunts begin on April 1, it is necessary to file these regulations as emergency so they take effect immediately.

Fiscal Impact Statement:

This amendment of Regulation 123.51 will result in increased public hunting opportunities that should generate additional State revenue through license sales. In addition, the local economy should benefit from sales of hunting supplies, food and overnight accommodations. Sales taxes on these items will also directly benefit government.

Resubmitted: February 11, 2005

Document No. 2900
STATE BOARD OF EDUCATION
 CHAPTER 43

Statutory Authority: S.C. Code Ann. §§ 59-5-65 (2004), and 59-65-90 (2004)

43-274. Student Attendance

Synopsis:

The amendment addresses the need for make-up programs for student absences. The program must require the student to meet the minimum number of hours for course credit and provide rigorous academic learning experiences. The amendment will also align this regulation with the Uniform Grading System and develop a time line for make-up work.

The Notice of Drafting was published in the *State Register* on December 26, 2003.

Section-by-Section Discussion

Section (VII)(B)(1)(2) Deleting summer school as an option and adding academic work as part of the requirements. New language is inserted to limit the time allowed for make-up work to be completed and allows local school boards to extend the time due to extenuating circumstances.

Instructions: Amend in its entirety 43-274, Student Attendance, to Chapter 43 regulations.

Text:

43-274. Student Attendance

I. Lawful and Unlawful Absences

School districts must adopt policies to define and list lawful and unlawful absences.

(A) Lawful absences include but are not limited to

- (1) absences caused by a student's own illness and whose attendance in school would endanger his or her health or the health of others,
- (2) absences due to an illness or death in the student's immediate family,
- (3) absences due to a recognized religious holiday of the student's faith, and
- (4) absences due to activities that are approved in advance by the principal.

(B) Unlawful absences include but are not limited to

- (1) absences of a student without the knowledge of his or her parents, or
- (2) absences of a student without acceptable cause with the knowledge of his or her parents.

(C) Suspension is not to be counted as an unlawful absence for truancy purposes.

20 FINAL REGULATIONS

II. Truancy

The State Board of Education recognizes that truancy is primarily an educational issue and that all reasonable, educationally sound, corrective actions should be undertaken by the school district prior to resorting to the juvenile justice system.

(A) Truant

A child ages 6 to 17 years meets the definition of a truant when the child has three consecutive unlawful absences or a total of five unlawful absences.

(B) Habitual Truant

A "habitual" truant is a child age 12 to 17 years who fails to comply with the intervention plan developed by the school, the child, and the parent(s) or guardian(s) and who accumulates two or more additional unlawful absences. This child may need court intervention and an initial truancy petition may be filed. The written intervention plan, and documentation of non-compliance, must be attached to the truancy petition asking for court intervention.

(C) Chronic Truant

A "chronic" truant is a child ages 12 to 17 years who has been through the school intervention process, has reached the level of a "habitual" truant, has been referred to Family Court and placed on an order to attend school, and continues to accumulate unlawful absences. Should other community alternatives and referrals fail to remedy the attendance problem, the "chronic" truant may be referred to the Family Court for violation of a previous court order. All school intervention plans existing to this point for this child and family must accompany the Contempt of Court petition as well as a written recommendation from the school to the court on action the court should take.

III. Intervention Plans

(A) Each district must develop a policy relating to requirements for intervention. The district plan for improving students' attendance must be in accordance with any applicable statutes.

(B) Once a child is determined to be truant as defined in Section II(A), school officials must make every reasonable effort to meet with the parent(s) or guardian(s) to identify the reasons for the student's continued absence. These efforts should include telephone calls and home visits, both during and after normal business hours, as well as written messages and e-mails. School officials must develop a written "intervention plan" to address the student's continued absence in conjunction with the student and parent(s) or guardian(s).

(C) The intervention plan must include but is not limited to

(1) Designation of a person to lead the intervention team. The team leader may be someone from another agency.

(2) Reasons for the unlawful absences.

(3) Actions to be taken by the parent(s) or guardian(s) and student to resolve the causes of the unlawful absences.

(4) Documentation of referrals to appropriate service providers and, if available, alternative school and community-based programs.

- (5) Actions to be taken by intervention team members.
- (6) Actions to be taken in the event unlawful absences continue.
- (7) Signature of the parent(s) or guardian(s) or evidence that attempts were made to involve the parents(s) or guardian(s).
- (8) Documentation of involvement of team members.
- (9) Guidelines for making revisions to the plan.

(D) School officials may utilize a team intervention approach. Team members may include representatives from social services, community mental health, substance abuse and prevention, and other persons the district deems appropriate to formulate the written intervention plans.

IV. Referrals and Judicial Intervention

At no time should a child ages 6 to 17 years be referred to the Family Court to be placed on an order to attend school prior to the written intervention planning being completed with the parent(s) or guardian(s) by the school. A consent order must not be used as an intervention plan from any local school or school district. Should the parent(s) or guardian(s) refuse to cooperate with the intervention planning to remedy the attendance problem, the school district has the authority to refer the student to Family Court in accordance with S.C. Code Ann. § 59-65-50 (1990), and a report shall be filed against the parent(s) or guardian(s) with the Department of Social Services in compliance with S.C. Code Ann. § 20-7-490 (2)(c)(Supp. 2002).

(A) Petition for a School Attendance Order

If the intervention plan is not successful and further inquiry by school officials fails to cause the truant student and/or parent(s) or guardian(s) to comply with the written intervention plan or if the student and/or parent(s) or guardian(s) refuses to participate in intervention and the student accumulates two or more additional unlawful absences, the student is considered an “habitual” truant. Each referral must include a copy of the plan and specify any corrective action regarding the student and/or the parent(s) or guardian(s) that the district recommends that the court adopt as well as any other available programs or alternatives identified by the school district. The intervention plan must be attached to the petition to the Family Court and served on the student and the parent(s) or guardian(s).

(B) Petition for Contempt of Court

Once a school attendance order has been issued by the Family Court and the student continues to accumulate unlawful absences, the student is considered to be a “chronic” truant and school officials may refer the case back to Family Court. The school and district must exhaust all reasonable alternatives prior to petitioning the Family Court to hold the student and/or the parent(s) or guardian(s) in contempt of court. Any petition for contempt of court must include a written report indicating the corrective actions that were attempted by the school district and what graduated sanctions or alternatives to incarceration are available to the court in the community. The school district must include in the written report its recommendation to the court should the student and/or parent(s) or guardian(s) be found in contempt of court.

V. Coordination with the South Carolina Department of Juvenile Justice

Each school district should coordinate with the local office of the South Carolina Department of Juvenile Justice to establish a system of graduated sanctions and alternatives to incarceration in truancy cases.

22 FINAL REGULATIONS

VI. Transfer of Plans

If a student transfers to another public school in South Carolina, intervention plans shall be forwarded to the receiving school. School officials will contact the parent(s) or guardian(s) and local team members to review the plan and revise as appropriate. Court ordered plans may be amended through application to the court.

VII. Approval of Absences in Excess of Ten Days and Approval of Credit

(A) Approval or Disapproval of Absences

The district board of trustees, or its designee, shall approve or disapprove any student's absence in excess of ten days, whether lawful, unlawful, or a combination thereof, for students in grades K–12.

For the purpose of awarding credit for the year, school districts must approve or disapprove absences in excess of ten days regardless as to whether those absences are lawful, unlawful, or a combination of the two.

(B) High School Credit

In order to receive one Carnegie unit of credit, a student must be in attendance at least 120 hours, per unit, regardless of the number of days missed. Students whose absences are approved should be allowed to make up any work missed in order to satisfy the 120-hour requirement. Local school boards should develop policies governing student absences giving appropriate consideration to unique situations that may arise within their districts when students do not meet the minimum attendance requirements.

Therefore, districts should allow students, whose excessive absences are approved in part 1 of this section, to make-up work missed to satisfy the 120-hours requirement.

Examples of make-up work may include

(1) after-school and/or weekend make-up programs that address both time and academic requirements of the course(s), or

(2) extended-year programs that address both time and academic requirements of the course(s).

All make-up time and work must be completed within thirty days from the last day of the course(s). The district board of trustees or its designee may extend the time for student's completion of the requirements due to extenuating circumstances as prescribed by State Board of Education Guidelines.

VIII. Reporting Requirements

The State Department of Education will develop and implement a standard reporting system for the adequate collection and reporting of truancy rates on a school-by-school basis.

IX. Guidelines

Additional information relating to the implementation of this regulation will be contained in State Department of Education Guidelines. The State Department of Education will review and update these guidelines as needed.

Statement Of Rationale:

The proposed amendment will add the requirement for academic rigor and align the regulation with the Uniform Grading System. To obtain a copy of the Statement of Rationale, contact Ms. Lucinda Saylor Deputy Superintendent for Curriculum Services and Assessment, State Department of Education, 1429 Senate Street, Columbia, S.C. 29201 or e-mail csaylor@sde.state.sc.us.

Fiscal Impact Statement:

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

Document No. 2897
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
 CHAPTER 61
 Statutory Authority: 1976 Code Section 44-55-10 *et seq.*

R. 61-58. *State Primary Drinking Water Regulations*

Synopsis:

This amendment of R.61-58 will specify cross connection control requirements for residential lawn irrigation systems and to clarify other existing cross connection control requirements. The amendments are in accordance with recommendations made by the Lawn Irrigation Backflow Taskforce, which was formed at the request of the state legislature. See discussion below for Section-by-Section Discussion and Statements of Need and Reasonableness and Rationale herein.

Section-by-Section Discussion of Revisions

<u>SECTION</u>	<u>CHANGE</u>
R.61-58.7.F (1)	Title added, renumbered and organized for clarity
R.61-58.7.F (2)	Title added and revised for clarity and to specify the minimum device required on low hazard cross connections
R.61-58.7.F (3)	Added to specify cross connection control requirements for residential lawn irrigation systems
R.61-58.7.F (4)	Title added and organized for clarity
R.61-58.7.F (5)	Title added
R.61-58.7.F (6)	Title added
R.61-58.7.F (7)	Title added and revised to exempt backflow prevention assemblies on residential lawn irrigation systems from annual testing requirement
R.61-58.7.F (8)	Title added
R.61-58.7.F (9)	Title added and wording revised for clarity

Instructions: Replace R.61-58.7.F as shown below in the Text of Amendment.

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Text of Amendment:

R.61-58.7.F:

F. Cross Connection Control

(1) General

(a) All public water systems shall initiate and maintain a viable cross connection control program. Such a program shall consist of:

(i) Locating and eliminating unprotected cross connections.

(ii) Maintaining records pertaining to the location of existing backflow prevention assemblies, type and size of each assembly and test results.

(b) No person shall install, permit to be installed or maintain any cross connection between a public water system and any other non-public water system, sewer or a line from any container of liquids or other substances, unless an approved backflow prevention device or assembly is installed between the public water system and the source of contamination.

(2) Low Hazard Cross Connections

A connection between an approved public water system and another water source not hazardous to health but not meeting the standards of the approved public water system and not cross-connected within its system with a potentially dangerous substance shall be considered a low hazard category cross connection. At a minimum, an approved Double Check Valve Assembly or Pressure Vacuum Breaker must be installed on a low hazard cross connection except as provided for in section 3 below.

(3) Residential Lawn Irrigation Systems

(a) Low hazard residential lawn irrigation systems - Each public water system which has low hazard residential irrigation systems directly or indirectly connected to their public water system must have a written low hazard residential lawn irrigation system cross connection control policy. This policy must be documented in writing and must be approved by the governing body of the public water system. The policy must specify the minimum acceptable device for low hazard residential lawn sprinkler systems. The minimum acceptable device for low hazard residential lawn sprinkler systems is a residential dual check. If a water system specifies another backflow prevention assembly as the minimum acceptable protection for these cross connections, the policy must be approved by the governing body of the public water system with due opportunity being provided for public comment and participation. The written policy must:

(i) identify the type of backflow prevention device or assembly that is required to be installed on low hazard residential lawn irrigation system connections.

(ii) establish a schedule for the required testing of double check valve assemblies, or other testable assembly, if testable assemblies are designated by the policy as minimum acceptable protection for low hazard residential lawn irrigation systems. The minimum testing frequency must be specified in the policy and appropriate records must be maintained to verify compliance with the established testing requirements.

(iii) establish a schedule for the required change out of residential dual checks if these are the devices

designated by the policy as minimum acceptable protection for low hazard residential lawn irrigation systems. The minimum change out frequency must be specified in the policy and appropriate records must be maintained to verify compliance with the established change out requirements.

(b) High hazard residential lawn irrigation systems – Any residential lawn irrigation system that includes chemical addition, or is also connected to another water source which is not an approved public water system, shall be considered a high hazard cross connection and must meet the requirements of paragraph (4) below.

(4) High Hazard Cross Connections

(a) A connection between an approved public water system and a service or other water system which has or may have any material in the water dangerous to health, or connected to any material dangerous to health, that is or may be handled under pressure, or subject to negative pressure, shall be considered a high hazard category cross connection. Protection shall be by air gap separation or an approved reduced pressure principle backflow prevention assembly.

(b) Reduced pressure principal backflow prevention assemblies shall not be installed in any location subject to possible flooding. This includes pits or vaults which are not provided with a gravity drain to the ground's surface that is capable of exceeding the discharge rate of the relief valve.

(5) Fire Sprinkler Systems

Fire line sprinkler systems, except those in the high hazard category shall be protected by an approved double check valve assembly. High hazard category fire sprinkler systems shall include, but not be limited to: antifreeze systems, foam systems, systems charged from or tied into ponds, lakes, streams, or any water source other than the approved public water supply. High hazard category fire sprinkler systems shall comply with the requirements of Paragraph (4) above.

(6) Approved Devices and Assemblies

The Department shall prepare and publish a list of backflow prevention assemblies approved by the Department for use in South Carolina, and this list shall be updated at least once annually.

(7) Testing Requirements

When double check valve assemblies, pressure vacuum breakers, and/or reduced pressure principal backflow prevention assemblies are installed to protect a public water system against the possibility of backflow from a customer's water service, routine testing of the assemblies shall be performed by a certified tester.

(a) Each assembly shall be tested by a certified tester after installation and before use by the customer. Except as specified in paragraph 3(a)(ii) above, each assembly shall be tested at least once annually by a certified tester.

(b) The public water system is to receive a written report of the inspection and testing results for all assemblies tested within its distribution system. The report shall be submitted by the certified tester making the inspection and test.

(c) All backflow prevention assemblies shall be tested immediately after repairs of any kind are made to the assembly.

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(8) Backflow Prevention Tester Certification

There are four (4) types of certified testers of backflow prevention assemblies; General Tester, Limited Tester, Inspector Tester and Manufacturer's Agent. The definition of each type of certified tester is specified in R.61-58(A).

(a) Each certified tester's license shall expire three (3) years from the date of issue. In order to renew this certification for three (3) more years, the tester shall come before a designated person approved by the Department and shall successfully complete a written examination with a passing score of 70%, and perform the prescribed test on an approved reduced pressure principal backflow prevention assembly, double check valve assembly, and a pressure vacuum breaker using the tester's own differential pressure gauge. The gauge must be accurate within 2% of full scale or plus or minus 0.3 pounds per square inch differential (PSID). Any gauge found to be inaccurate or malfunctioning will be required to be calibrated or repaired as needed to bring it into compliance before certification will be renewed.

(b) Any applicant for certification who fails to properly perform the above prescribed tests will have his certification revoked immediately and will have to successfully complete the state sponsored backflow prevention training and certification course in order to become re-certified as a tester of backflow prevention assemblies in South Carolina.

(c) A certified tester may have his tester's certification revoked due to incompetence or falsification of test results, as determined by the Department.

(d) The Department shall reserve the right to charge or allow for the charge of a nominal fee for the administration of the recertification of testers. This fee shall not exceed fifty dollars (\$50.00).

(9) Installation of Pressure Vacuum Breakers

Where used, pressure vacuum breakers shall be installed at a minimum of twelve (12) inches above the highest downstream piping and shall not be subject to backpressure.

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):

DESCRIPTION OF REGULATION: Amendment to Regulation 61-58, State Primary Drinking Water Regulations

Purpose: This amendment revises R.61-58 in order to adopt new backflow prevention requirements for residential lawn irrigation systems. This amendment was proposed to address recommendations of the Lawn Irrigation Backflow Taskforce which was formed at the request of the state legislature to address inconsistencies in the statewide implementation of cross connection control requirements for residential lawn irrigation systems by public water systems.

Legal Authority: The State Primary Drinking Water Regulations are authorized by S.C. Code Ann. 44-55-10 et. seq., State Safe Drinking Water Act.

Plan for Implementation: These amendment will be incorporated within R.61-58 upon approval of the General Assembly and publication in the *State Register*. This amendment will be implemented in the same manner in which the existing regulation is implemented.

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

The adoption of these regulations, which address backflow prevention requirements for residential lawn irrigation systems, will address some of the recommendations of the Lawn Irrigation Taskforce which was formed at the request of the state legislature.

DETERMINATION OF COSTS AND BENEFITS: The changes to backflow prevention requirements for residential lawn irrigation systems should not result in any major expenses for public water systems in the state. Private citizens may realize a financial benefit if systems decide to implement the less stringent requirements included in this proposed amendment. There will be no costs to the state or its political subdivisions.

UNCERTAINTIES OF ESTIMATES: minimal

EFFECT ON ENVIRONMENT AND HEALTH: The amendments would offer an option for water systems to implement less protective backflow prevention protection for residential lawn sprinkler systems. It is difficult to determine if there would actually be a detrimental effect on public health as a result of this amendment. There will be no detrimental effect on the environment as a result of this amendment.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED: There will be no detrimental effect on the environment if the amendments are not implemented.

Statement of Rationale:

The Statement of Rationale was developed by staff pursuant to S.C. Code Section 1-23-120:

In 2002, the state legislature asked the Department to form a taskforce to study the issue of backflow prevention protection for residential lawn irrigation systems and report back to them with the finding of the taskforce. The taskforce included representatives from water utilities, backflow experts, consumer advocates and concerned citizens. The taskforce met a total of four times and, as a result, the Department produced a report entitled Lawn Irrigation Backflow Taskforce: Report to The Legislature. This proposed amendment is intended to address the recommendations of the taskforce, which are outlined in the report.

Document No. 2908
DEPARTMENT OF INSURANCE
Chapter 69

Statutory Authority: 1976 Code Sections 38-3-110, 1-23-110, et seq., 38-43-106

69-50. Continuing Insurance Education

Synopsis:

The Department of Insurance is proposing this amendment to Regulation 69-50 in order to conform with recent changes with respect to continuing education requirements resulting from the enactment of the Producer Licensing legislation (Act 323 of 2002). This regulation establishes rules and standards which apply to continuing insurance education for individuals qualified or licensed to act as insurance producers in this State.

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Instructions:

Strike existing Regulation 69-50 in its entirety and replace with the language provided.

Text:

R. 69-50. Continuing Insurance Education

I. Purpose.

The purpose of this regulation is to establish rules and standards which shall apply to continuing insurance education for individuals qualified or licensed to act as insurance producers in this State.

II. Scope.

A. The rules contained in this regulation shall apply to all individuals qualified or licensed to act as insurance producers in this State, including nonresident insurance producers, except:

1. Insurance producers licensed solely for credit life or credit accident and health insurance, credit property insurance, crop hail insurance, automobile physical damage insurance, mortgage guaranty, or mortgage, title, travel accident and baggage, or federal crop insurance, automobile liability insurance, industrial fire and preneed; and

2. Insurance producers licensed solely for domestic insurance companies with less than one million dollars in written premiums in any calendar year; and

3. Licensed special producers; and

4. Nonresident producers who have successfully satisfied continuing insurance education requirements of their resident state, regardless of the requirements of that other state. Nonresident producers must submit a letter of certification to the Continuing Education Administrator showing they have met the continuing education requirements of their state.

B. Multi-line producers who do not wish to complete the required eight hours in each line of authority held must submit a request in writing to the Department by May 1 of the biennial compliance year to cancel the line(s) of authority in which they do not wish to complete the eight required hours. However, the producer must complete a total of twenty- four hours of continuing education.

C. The Director of Insurance at his discretion may mandate certain continuing education courses to be taken by producers to meet continuing education compliance.

III. Definitions.

When used with these regulations, the following definitions apply:

1. "Approved Course" is a course offered in a classroom environment that is approved by the South Carolina Department of Insurance for continuing insurance education credit. Approved courses may include information on specific insurance products approved for sale in the state, relevant state or national laws, taxation related to insurance, insurance practices, ethics, claim procedures and policyholder relations. Approved courses shall not include courses or portions of courses developed for prelicensing education, for personal development, motivation, sales, or personal enrichment. Approved courses must be led or monitored by an approved instructor.

2. "Approved Instructor" means an individual who has been approved by the Department of Insurance in accordance with Section V of this Regulation and who teaches or otherwise instructs an approved continuing education course or program. The individual must have competency in the-subject matter of the course.

3. "Approved Proctor" means an individual who has been approved in accordance with Section VI of this Regulation by the Department of Insurance to personally monitor competency examinations. Proctors must be in the room with the individual taking the examination.

4. "Approved Sponsor" is a responsible organization which demonstrates it is capable of offering, conducting, and maintaining quality controls of courses. Approved sponsors may include licensed insurance companies, producer associations, insurance trade associations, private organizations, and institutions of higher learning. A sponsor must be approved by the Department.

5. "Classroom" is a location conducive to learning, and may include a traditional classroom, an auditorium, or other meeting-place, which provides an environment suitable for the transfer of information.
6. "Classroom Hour" is at least fifty minutes of participation in an approved course in a classroom. Not more than ten minutes of any sixty-minute period may be used for breaks, roll taking, or administrative instructions.
7. "Competency Examination" is a closed book examination taken and passed by the producer without assistance and personally monitored by an approved proctor or approved instructor who is not related to the producer, his immediate supervisor, or his employee. A score of 70 or above is required for the examinee to pass the examination. Examinations may be administered at any appropriate site chosen by the proctor or instructor. Sponsors may have their examinations administered at approved national testing organizations.
8. "Compliance Deadline" means 5 P.M. on May 1 of even-numbered years.
9. "Compliance With Continuing Education for Resident Producers" means completing twenty-four hours of continuing education by May 1 of the compliance year, with a minimum of eight hours in each line of authority, and paying a recordkeeping fee to the Continuing Education Administrator by May 1 in a biennial compliance year.
10. "Compliance With Continuing Education for Nonresident Producers" means filing a letter of certification showing compliance in their home state and paying a continuing education recordkeeping fee by May 1 in a biennial compliance year.
11. "Course" means an organized, outlined body of information intended to convey knowledge or information to the producer.
12. "Credit Hour" is a value assigned to an approved course by the Department. Hours of credit are calculated in full hours.
13. "Department" means the South Carolina Department of Insurance.
14. "Director" means the Director of the Department of Insurance or his designee.
15. "Product-Specific" or "Specific Insurance Products" means information about a particular policy, procedure, or coverage. This includes, but is not limited to, special rating information, special underwriting practices, and specialized or unique claim procedures of a company or group of companies.
16. "Self-study Hour" is a study period of one hundred minutes or more from an approved course followed by a competency examination. Self-study hours may include textbook study, video study, distance learning, intranet, internet, CD-ROM and any other electronic means of information communication.

IV. Sponsor Approval.

- A. Sponsors must be approved by the Department of Insurance before they may submit courses for approval to the Department. The application to become a sponsor must be submitted to the Department at least thirty days (30) days prior to the Continuing Education Advisory Committee meeting. If the applicant's type of business is a private entity, other than an insurance company, producer's trade association, institution of producer's trade association or institution of higher learning, the applicant must submit a letter explaining the applicant's type of business and how long the business has been offering insurance education courses. Applicants must certify under oath that no one in their organization has been convicted of a crime of moral turpitude, a felony under USC 18 §1033 and §1034, nor has anyone been subject to an order of revocation, suspension or other formal disciplinary action by any licensing authority. Sponsors must report to the Department any disciplinary action taken against that provider by another state insurance regulatory authority.
- B. Before an approved sponsor may offer any course, the sponsor must submit the course to the Department for approval and be assigned a course approval number by the Department.
- C. Sponsors may not use another sponsor's course approval number without the prior written authorization of the sponsor. A copy of the authorization must be submitted to the Department before the course may be offered.
- D. Approved sponsors of approved courses are responsible for collecting accurate attendance records and maintaining records containing the names of producers who completed all sessions of the approved course, or who successfully completed the competency examination for courses approved for self-study. Sponsors shall maintain these records for a three-year period following the date of approved course completion. These records must be made available to the Department upon request.
- E. Approved sponsors are responsible for the actions of their instructors and proctors.
- F. Approved sponsors may only offer courses which have been approved by the Department.

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G. Approved sponsors must notify the Department in writing within thirty (30) days of any change in address and of any change in the authorized representative of the sponsor.

H. Approved classroom sponsors must have their instructors read SCID Form 3617 at the beginning of each continuing education classroom session. Instructors shall certify on course completion rosters that SCID Form 3617 was covered in detail with class participants. Approved sponsors of correspondence courses must include a copy of SCID Form 3617 with each packet of course material. Approved correspondence sponsors must certify on course completion rosters that a copy of SCID Form 3617 was included with each packet of course material. Students must acknowledge to the approved sponsor receipt and understanding of the requirements of SCID form 3617. Sponsors shall maintain these records for a minimum of three years.

I. Approved sponsors must allow representatives of the Department and the continuing education administrator, in an official capacity, to audit classroom course instruction, correspondence course review sessions, course records, records of examination and attendance rosters. These representatives may attend any course offered for the purpose of the audit without paying a fee.

V. Course Approval.

A. Approved Sponsors of courses presented for approval under these definitions shall submit to the Department at least thirty (30) in advance of the Continuing Education Advisory Board meeting an application for approval, which shall include the following: (1) A detailed outline of the course, (2) a timetable, with instruction minutes assigned to each topic, (3) a list of supplemental teaching aids, (4) a sample competency examination if the course is self-study with text reference for each exam question, (5) course material, (6) self study courses must include a certification report of the number of words per document, grade level and degree of difficulty of the course, (7) online courses must include a screen count and number of words per screen (8) a nonrefundable filing fee established by the Department. No course may be offered until written notification of its approval has been issued by the Department. Incomplete submissions will be disapproved and the application will be returned to the sponsor. Once approved, courses may be offered without additional notice subject to Section X(D) of this Regulation as long as the course content is unchanged. The Director has the discretion to develop different standards for approval of courses offered by accredited institutions of higher learning, and to waive independent approval of courses offered by nationally recognized industry organizations.

B. Courses will be approved for a period of not more than three (3) years from the approval date. Sponsors may reapply for course approval after three years.

C. Courses that are submitted for renewal must include all the information requested in Section V (A) of this regulation and must include the page numbers and sections where updates to course material have been made.

D. Approved sponsors may file an appeal if a course submission is disapproved or if fewer hours are approved than was requested by the sponsor. The appeal must specify the exact disagreement and contain documentation to support the appeal. Appeals must be in writing and must be submitted to the Department within thirty days of receipt of the notice of course disapproval or notice of fewer hours approved. Appeals will be submitted to three representatives of the CE Advisory Board for review and recommendation to the Department.

VI. Instructor Approval.

A. Instructors must be approved by the Department of Insurance before teaching any course. The application packet must be submitted by an approved sponsor thirty (30) days prior to the instructor teaching any course and must include the following: (1) a properly completed instructor approval application (2) documentation of one of the following must be submitted with the application for approval: (a) a college degree in insurance from an accredited institution of higher learning, (b) a professional designation of CLU, CPCU or CIC for property and casualty approval and ChFC, CFP, FLMI, LUTCF, RHU, or REBC for life, accident and health approval, (c) five or more years of practical experience in the subject matter, (d) or a college degree and three or more years of insurance experience in the subject matter, (e) three or more years of practical experience in the subject matter and has one or more of the following professional insurance designations or programs in the subject matter which approval is sought: CEBS, CLTC, CSA, INS, AAI, or (f) Insurance Department regulators with a minimum of three years of insurance experience; (3) a nonrefundable filing fee to be established by the Department of Insurance. Incomplete submissions will be returned to the sponsor. Approved instructors shall certify under oath they have not been convicted of a crime of moral turpitude, a felony USC 18 §1033 and §1034, nor have they been subject to an order of revocation, suspension or other formal disciplinary action by any licensing authority.

- B. Instructors will be approved for a period of not more than three (3) years from the approval date. Sponsors may reapply for approval of their Instructors for approval after three (3) years.
- C. Instructors must ensure that attendees do not use class time for any purpose other than learning the material being presented. Instructors should deny credit to anyone who is inattentive or who does not attend the entire classroom session.
- D. Instructors must read SCID Form 3617 at the beginning of each continuing education classroom session. Instructors shall certify on course completion rosters that SCID Form 3617 was covered in detail with class participants.
- E. Instructors/ Proctors who proctor examinations are responsible for checking an examinee's photograph identification before administering an examination. Instructors are responsible for returning all examination material to the sponsor within two days following the completion of the examination.
- F. Instructors/Proctors of correspondence course review sessions must not disclose the examination questions or answers to the examination questions on the competency examination during the review session.

VII. Proctor Approval.

- A. Proctors must be approved by the Department of Insurance before proctoring any examination. The application packet must be submitted thirty (30) days in advance of monitoring any examination and must include the following: (1) a properly completed proctor approval application, (2) a letter of recommendation from an employer or former employer, (3) a nonrefundable filing fee to be established by the Department of Insurance. Incomplete submissions will be disapproved and returned to the applicant. Approved proctors shall certify under oath they have not been convicted of a crime of moral turpitude, a felony under USC 18 § 1033 and § 1034, nor have they been subject to an order of revocation, suspension or any other formal disciplinary action in any state.
- B. Proctors will be approved for a period of not more than three (3) years from the approval date. Proctors may reapply for approval after three years.
- C. Producers must check a photographic identification before administering an examination.
- D. Proctors are responsible for returning all examination material to the sponsor within two days following the completion of the examination.
- E. Instructors/proctors of correspondence course review sessions must not disclose the examination questions or answers to the examination questions on the competency examination during the review or examination session.
- F. Proctors are responsible for monitoring test sites to ensure fairness.

VIII. Certification.

- A. Approved Sponsors of approved courses must submit class rosters to the Continuing Education Administrator according to the following timetable:
 1. Approved classroom course or seminar - within thirty (30) days of completion of the course or seminar;
 2. Approved self-study course - within thirty (30) days of the examination completion date;
 3. Approved national designation courses - within sixty (60) days of examination completion date. However, in a biennial compliance year, the Continuing Education Administrator must receive all rosters by the compliance deadline. If the compliance deadline falls on a holiday or weekend, then rosters may be received on the first business day immediately thereafter. The Continuing Education Administrator must receive class rosters for those who have been granted an extension pursuant to Section XII of this Regulation by 5 P.M., July 1. If July 1 falls on a holiday or weekend, then rosters may be received on the first business day immediately thereafter. Rosters must be properly completed, typewritten or computer- generated and contain the names and identification numbers of producers who completed all sessions of the approved course, or who successfully completed the competency examination for courses approved for self-study. The sponsor must examine the course completion records to determine the integrity of the grades and courses reported to the Continuing Education Administrator. Incomplete or inaccurate rosters will be returned to the sponsor. Subsequent submissions of any roster that has been returned must include a letter from the sponsor explaining corrections or any changes made.
- B. Approved Sponsors of approved courses are required to provide a certification of course completion to each individual who successfully completes an approved course or an approved self-study course within thirty (30) business days after the course is completed or the competency examination results are received. Verification of the accuracy of the certification provided by the approved sponsor remains the responsibility of the producer.

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C. A producer who successfully completes an approved course may not repeat the course and receive certification within three years of its original completion date.

D. Instructors of approved classroom courses shall be given a certification equal to the number of hours for which the course is approved. Instructors/Proctors may not be given a certification for conducting review sessions for approved correspondence courses.

E. Producers who accumulate credits in excess of the continuing insurance education requirements may apply these additional credits to the next biennial continuing insurance education period. No more than eighteen (18) additional credit hours in the line of authority in which they are earned may be carried forward to the next biennial continuing insurance education period.

F. No credit will be given for courses taken before they have been approved by the Department. Credit may not be given for courses that have not been renewed by the sponsor.

IX. Forms.

The following items must be submitted to the Director on forms specified or approved by the Director: (1) applications for sponsor approval, (2) applications for course approvals, (3) applications for instructor approval, and (4) applications for proctor approval. Class completion rosters must be submitted to the CE Administrator on forms specified or approved by the Department. However, individual course completion certificates ("green sheets") may be sent to the CE Administrator or may be retained by the producer.

X. Advertising.

A. No course may be advertised as an approved course until written confirmation of the course approval has been received from the Department.

B. Announcements, advertisements and information about courses designated as approved courses by the Department shall contain the statement "This course is approved by the South Carolina Department of Insurance for Continuing Insurance Education Credit" followed by a statement of the number of credit hours and the type of license to which the credit may apply. If the course offering contains material which is not approved, the announcement, advertisement or information must clearly state the amount of course time which is not approved for continuing insurance education credits.

C. Announcements, advertisements or information about approved courses shall contain clear and concise statements about the cost of the course, cancellation procedures, and tuition refund policies.

D. Classroom Course schedules and correspondence course review session schedules must be submitted by the sponsor to the Continuing Education Administrator fifteen (15) days in advance of the course or seminar being presented. The course schedule must include the following information: (1) name of the approved course(s) (2) name(s) of the approved instructor(s) teaching the course(s), (3) date, time, and place where the course(s) is being presented. Changes and cancellations must be sent as soon as known and, in all instances, before the scheduled date.

XI. Fees.

Every producer subject to continuing insurance education requirements pursuant to Section 38-43-106 of the South Carolina Code of Laws is responsible for payment of a reasonable annual recordkeeping fee to the Continuing Education Administrator for operation of the continuing insurance education program. The license and appointment(s) of any producer who does not pay the continuing education recordkeeping fee by the compliance deadline will be suspended on October 1 of the biennial compliance year. Producers may reactivate the license that has been suspended if by November 1 of the compliance year the continuing education recordkeeping fee and a \$50 penalty has been paid, and proof of completion of a total of thirty hours of continuing education credits has been received. Failure to pay the continuing education recordkeeping fee and a \$50 penalty and providing proof of completion of thirty hours of continuing education credits by 5 PM November 1 of the compliance year will result in the license and appointment being canceled. In order to regain licensure status, the producer must retake and pass the appropriate producer licensing examination.

XII. Continuing Education Hours.

Producers who fail to complete twenty-four hours of approved continuing education credits by the biennial compliance deadline of 5:00 p.m. May 1, may, within six months from the compliance deadline, November 1, reactivate the license and appointments that were suspended effective 5:00 p.m. October 1 of the compliance year, provided documentation of completion of a total of thirty credit hours of approved continuing education has been submitted and a penalty fee of \$50 is paid to the Department of Insurance for administrative services by 5 p.m. November 1 of the compliance year. The license and appointment(s) of a producer who does not provide documentation of compliance by 5:00 p.m. November 1, will be canceled. In order to regain licensing status, the producer must retake and pass the appropriate producer licensing examination.

XIII. Non-Compliance.

A. The Director shall have the authority to conduct surveys of producers, approved sponsors, or approved instructors to verify that the approved courses are administered as filed with the Department, and to determine compliance with Section 38-43-106 of the South Carolina Code of Laws and the regulations contained herein.

B. The failure of approved sponsors, instructors, and proctors to comply with the provisions of Section 38-43-106 of the South Carolina Code of Laws or with the provisions of these regulations may result in a fine of not less than \$ 1,000, suspension of approval or termination of approval status.

C. Non-compliance with the provisions of Section 38-43-106 of the South Carolina Code of Laws or the provisions of this regulation, by a producer subject to the continuing insurance education requirements, shall result in the nonrenewal of the producer's license on the biennial license renewal date and the removal of the producer's qualifications to act as an insurance producer in this State.

XIV. Extension.

A producer unable to complete continuing insurance education requirements as required by this regulation, may request an extension from the Continuing Education Administrator. The request for an extension must be in writing either by U.S. Mail, facsimile transmission or electronic transmission and must be received on or before May 1 of the biennial compliance year. The written request for an extension shall be automatically granted for a period of not more than sixty (60) days. The extension will expire at 5 P.M. on July 1, of the biennial compliance year.

XV. Hardship.

In order to qualify for a hardship extension, a producer first must have received an extension as provided in Section XIII of this Regulation. The request for a hardship extension must be in writing and must be received on or before July 1 of the biennial compliance year. Hardship extension requests may only be granted for good cause shown, with the recommendation of the Continuing Education Administrator and the approval of the Director. For purposes of this section, "good cause" includes, but is not limited to, illness or catastrophic events beyond the control of the producer, which preclude the producer from conducting normal work activities during the two-year biennial compliance period. The producer must provide sufficient justification that the hardship prevented the producer from conducting normal work activities during the two-year compliance period. A licensed insurance producer who is unable to comply with continuing education due to active military service during the two-year compliance period may request a hardship extension by submitting a copy of his military orders with the hardship extension request. Producers who fail to complete the continuing insurance education requirements within the extension period shall result in the nonrenewal of the producer's license on the biennial license renewal date and the removal of the producer's qualifications to act as an insurance producer in this State.

XVI. Administration Of Continuing Education Requirements.

The Director is responsible for administering the continuing insurance education requirements contained in SC Code of Laws Section 38-43-106 and in this regulation, and is responsible for the approval of courses of instruction which qualify for these purposes. In administering this program, the Director in his discretion, may designate a Continuing Education Administrator within the Department, or, in the alternative, contract with an outside service provider to function as continuing education administrator and to provide record-keeping services.

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Preliminary Fiscal Impact Statement:

No additional state funding is requested.

Statement of Rationale:

No reports or studies were relied upon in the drafting of this regulation. The bases for this regulation are requirements outlined in Chapter 43 of Title 38 of the South Carolina Code of Laws as well as national standards.

Document No. 2905
DEPARTMENT OF INSURANCE
CHAPTER 69

Statutory Authority: S.C. Code Sections 38-3-110; 38-9-200; 1-23-10 et seq.

69-53. Credit for Reinsurance

Synopsis:

The Department proposes to amend Regulation 69-53 in order to reflect recent revisions made to the State's credit for reinsurance statutes (Sections 38-9-200 through 220). Proposed revisions are intended to: (1) Clarify that the trusts are for the benefit of ceding insurers, i.e., they are to fund liabilities for business ceded by United States ceding insurers; (2) Mandate that, in the event of an insolvency of a non-U.S. insurer or reinsurer, the security which has been provided to fund the U.S. obligations shall be maintained in the U.S., and claims shall be filed with and valued by a state regulator in accordance with U.S. law; (3) Clarify that liabilities are to be funded on a gross, instead of a net, basis. As a result, the regulation includes an improved definition of liabilities, making it clear that on a gross basis, losses, allocated loss expenses, reserves for losses reported and outstanding, reserves for losses incurred but not reported, and reserves for allocated loss expenses and unearned premium must all be funded; and (4) Provide a list of investment standards for those investments held in trust for the benefit of U.S. ceding insurers.

Instructions:

Strike existing Regulation 69-53 in its entirety and replace with the language provided.

Text:

Section I. Purpose

The purpose of this regulation is to set forth rules and procedural requirements which the director or his designee deems necessary to carry out the provisions of Sections 38-9-190 through 38-9-220. The actions and information required by this regulation are hereby declared to be necessary and appropriate in the public interest and for the protection of the ceding insurers in this State.

Section II. Severability

If any provisions of this regulation, or the application of the provision to any person or circumstance, is held invalid, the remainder of the regulation, and the application of the provisions to persons or circumstances other than those to which it is held invalid, shall not be affected.

Section III. Reinsurer licensed in this state

Pursuant to Section 38-9-200(B), the director or his designee shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which was licensed in this State as of any date on which statutory financial statement credit for reinsurance is claimed.

Section IV. Accredited reinsurers

A. Pursuant to Section 38-9-200(C), the director or his designee shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which is accredited as a reinsurer in this State as of any date on which statutory financial statement credit for reinsurance is claimed. An accredited reinsurer:

1. Files a properly executed Form AR-1 (attached as an exhibit to this regulation) as evidence of its submission to this State's jurisdiction and to this State's authority to examine its books and records;

2. Files with the director or his designee a certified copy of a certificate of authority or other acceptable evidence that it is licensed to transact insurance or reinsurance in at least one state, or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;

3. Files annually with the director or his designee a copy of its annual statement filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement; and

4. a. Maintains a surplus as regards policyholders in an amount not less than \$20,000,000 and whose accreditation has not been denied by the director or his designee within ninety (90) days of its submission; or

b. Maintains a surplus as regards policyholders of less than \$20,000,000, and whose accreditation has been approved by the director or his designee.

B. If the director or his designee determines that the assuming insurer has failed to meet or maintain any of these qualifications, the director or his designee may upon written notice and hearing revoke the accreditation. Credit shall not be allowed a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the director or his designee.

Section V. Reinsurer domiciled and licensed in another state

A. Pursuant to Section 38-9-200(D), the director or his designee shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which as of any date on which statutory financial statement credit for reinsurance is claimed:

1. Is domiciled (or, in the case of a United States branch of an alien assuming insurer, is entered through) a state which employs standards regarding credit for reinsurance substantially similar to those applicable under the Code and this regulation;

2. Maintains a surplus as regards policyholders in an amount not less than \$20,000,000; and

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3. Files a properly executed Form AR-1 with the director or his designee as evidence of its submission to this State's authority to examine its books and records.

B. The provisions of this section relating to surplus as regards policyholders shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system. As used in this section, "substantially similar" standards means credit for reinsurance standards which the director or his designee determines equal or exceed the standards of the Code and this regulation.

Section VI. Reinsurers maintaining trust funds

A. Pursuant to Section 38-9-200(E), the director or his designee shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which, as of any date on which statutory financial statement credit for reinsurance is claimed, and thereafter for so long as credit for reinsurance is claimed, maintains a trust fund in an amount prescribed below in a qualified United States financial institution as defined in Section 38-9-220, for the payment of the valid claims of its United States domiciled ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the director or his designee substantially the same information as that required to be reported on the National Association of Insurance Commissioners annual statement form by licensed insurers, to enable the director or his designee to determine the sufficiency of the trust fund.

B. The following requirements apply to the following categories of assuming insurer:

1. The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable reinsurance ceded by U.S. domiciled insurers, and in addition, the assuming insurer shall maintain a trusteed surplus of not less than \$20,000,000.

2. a. The trust fund for a group including incorporated and individual unincorporated underwriters shall consist of:

(1) For reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after August 1, 1995, funds in trust in an amount not less than the group's several liabilities attributable to business ceded by U. S. domiciled ceding insurers to any member of the group;

(2) For reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995, and not amended or renewed after that date, notwithstanding the other provisions of this regulation, funds in trust in an amount not less than the group's several insurance and reinsurance liabilities attributable to business written in the United States; and

(3) In addition to these trusts, the group shall maintain a trusteed surplus of which \$100,000,000 shall be held jointly for the benefit of the U. S. domiciled ceding insurers of any member of the group for all the years of account.

b. The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members. The group shall, within ninety (90) days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the director or his designee:

(1) An annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group; or

(2) If a certification is unavailable, a financial statement, prepared by independent public accountants, of each underwriter member of the group.

3. a. The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of \$10,000,000,000 (calculated and reported in substantially the same manner as prescribed by the annual statement instructions and Accounting Practices and Procedures Manual of the NAIC) and which has continuously transacted an insurance business outside the United States for at least three (3) years immediately prior to making application for accreditation, shall:

(1) Consist of funds in trust in an amount not less than the assuming insurers' several liabilities attributable to business ceded by U. S. domiciled ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of such group and;

(2) Maintain a joint trusteed surplus of which \$100,000,000 shall be held jointly for the benefit of U.S. domiciled ceding insurers of any member of the group; and

(3) File a properly executed Form AR-1 as evidence of the submission to this State's authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any such examination.

b. Within ninety (90) days after the statements are due to be filed with the group's domiciliary regulator, the group shall file with the director or his designee an annual certification of each underwriter member's solvency by the member's domiciliary regulators, and financial statements, prepared by independent public accountants, of each underwriter member of the group.

C. 1. Credit for reinsurance shall not be granted unless the form of the trust and any amendments to the trust have been approved by either the commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that:

a. Contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied thirty (30) days after entry of the final order of any court of competent jurisdiction in the United States;

b. Legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's United States ceding insurers, their assigns and successors in interest;

c. The trust shall be subject to examination as determined by the director or his designee;

d. The trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust;

e. No later than February 28 of each year the trustees of the trust shall report to the director or his designee in writing setting forth the balance in the trust and listing the trust's investments at the preceding year end, and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the following December 31.

2. a. Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by this subsection or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over

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the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund.

b. The assets shall be distributed by and claims shall be filed with and valued by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies.

c. If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the U. S. beneficiaries of the trust, the commissioner with regulatory oversight over the trust shall return the assets, or any part thereof, to the trustee for distribution in accordance with the trust agreement.

d. The grantor shall waive any right otherwise available to it under U.S. law that is inconsistent with this provision.

D. For purposes of this regulation, the term "liabilities" shall mean the assuming insurer's gross liabilities attributable to reinsurance ceded by U. S. domiciled insurers that are not otherwise secured by acceptable means, and, shall include:

1. For business ceded by domestic insurers authorized to write accident and health, and property and casualty insurance:

- a. Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;
- b. Reserves for losses reported and outstanding;
- c. Reserves for losses incurred but not reported;
- d. Reserves for allocated loss expenses; and
- e. Unearned premiums.

2. For business ceded by domestic insurers authorized to write life, health and annuity insurance:

- a. Aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;
- b. Aggregate reserves for accident and health policies;
- c. Deposit funds and other liabilities without life or disability contingencies; and
- d. Liabilities for policy and contract claims.

E. Assets deposited in trusts established pursuant to Section 38-9-200 and this section shall be valued according to their fair market value and shall consist only of cash in U. S. dollars, certificates of deposit issued by a U.S. financial institution as defined in Section 38-9-220, clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified U.S. financial institution, as defined in Section 38-9-220, and investments of the type specified in this subsection, but investments in or issued by an entity controlling, controlled by or under common control with either the grantor or beneficiary of the trust shall not exceed five percent (5%) of total investments. No more than twenty percent (20%) of the total of the investments in the trust may be foreign investments authorized under Paragraphs 1.e., 3, 6.b. or 7 of this subsection, and no more than ten percent (10%) of the total of the investments in the trust may be securities denominated in foreign currencies. For purposes of applying the preceding sentence, a depository receipt denominated in U. S. dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign

currency. The assets of a trust established to satisfy the requirements of Section 38-9-200 shall be invested only as follows:

1. Government obligations that are not in default as to principal or interest, that are valid and legally authorized and that are issued, assumed or guaranteed by:

- a. The United States or by any agency or instrumentality of the United States;
- b. A state of the United States;
- c. A territory, possession or other governmental unit of the United States;
- d. An agency or instrumentality of a governmental unit referred to in Subparagraphs (b) and (c) of this paragraph if the obligations shall be by law (statutory or otherwise) payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but shall not be obligations eligible for investment under this paragraph if payable solely out of special assessments on properties benefited by local improvements; or
- e. The government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

2. Obligations that are issued in the United States, or that are dollar denominated and issued in a non-U.S. market, by a solvent U. S. institution (other than an insurance company) or that are assumed or guaranteed by a solvent U. S. institution (other than an insurance company) and that are not in default as to principal or interest if the obligations:

- a. Are rated A or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;
- b. Are insured by at least one authorized insurer (other than the investing insurer or a parent, subsidiary or affiliate of the investing insurer) licensed to insure obligations in this state and, after considering the insurance, are rated AAA (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or
- c. Have been designated as Class One or Class Two by the Securities Valuation Office of the NAIC;

3. Obligations issued, assumed or guaranteed by a solvent non-U. S. institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of U.S. corporations issued in a non-U.S. currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

4. An investment made pursuant to the provisions of Paragraph 1, 2 or 3 of this subsection shall be subject to the following additional limitations:

- a. An investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities shall not exceed five percent (5%) of the assets of the trust;
- b. An investment in any one mortgage-related security shall not exceed five percent (5%) of the assets of the trust;

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c. The aggregate total investment in mortgage-related securities shall not exceed twenty-five percent (25%) of the assets of the trust; and

d. Preferred or guaranteed shares issued or guaranteed by a solvent U. S. institution are permissible investments if all of the institution's obligations are eligible as investments under Paragraphs (2)(a) and (2)(c) of this subsection, but shall not exceed two percent (2%) of the assets of the trust.

5. As used in this regulation:

a. "Mortgage-related security" means an obligation that is rated AA or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC and that either:

(1) Represents ownership of one or more promissory notes or certificates of interest or participation in the notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates or participation), that:

(i) Are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S.C.A. Section 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and

(ii) Were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. Sections 1709 and 1715-b, or, where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. Section 1703; or

(2) Is secured by one or more promissory notes or certificates of deposit or participations in the notes (with or without recourse to the insurer of the notes) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of Items (1)(i) and (1)(ii) of this subsection;

b. "Promissory note," when used in connection with a manufactured home, shall also include a loan, advance or credit sale as evidenced by a retail installment sales contract or other instrument.

6. Equity interests

a. Investments in common shares or partnership interests of a solvent U. S. institution are permissible if:

(1) Its obligations and preferred shares, if any, are eligible as investments under this subsection; and

(2) The equity interests of the institution (except an insurance company) are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S.C. ss 78a to 78kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the National Association of Securities Dealers, Inc. A trust shall not invest in equity interests under this paragraph an amount exceeding one percent (1%) of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company;

b. Investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, if:

(1) All its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC; and

(2) The equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development;

c. An investment in or loan upon any one institution's outstanding equity interests shall not exceed one percent (1%) of the assets of the trust. The cost of an investment in equity interests made pursuant to this paragraph, when added to the aggregate cost of other investments in equity interests then held pursuant to this paragraph, shall not exceed ten percent (10%) of the assets in the trust;

7. Obligations issued, assumed or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.

8. Investment companies

a. Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 U.S.C. s 802, are permissible investments if the investment company:

(1) Invests at least ninety percent (90%) of its assets in the types of securities that qualify as an investment under Paragraph 1, 2 or 3 of this subsection or invests in securities that are determined by the director or his designee to be substantively similar to the types of securities set forth in Paragraph 1, 2 or 3 of this subsection; or

(2) Invests at least ninety percent (90%) of its assets in the types of equity interests that qualify as an investment under Paragraph 6.a. of this subsection;

b. Investments made by a trust in investment companies under this paragraph shall not exceed the following limitations:

(1) An investment in an investment company qualifying under Subparagraph a.(1) of this paragraph shall not exceed ten percent (10%) of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall not exceed twenty-five percent (25%) of the assets in the trust; and

(2) Investments in an investment company qualifying under Subparagraph a.(2) of this paragraph shall not exceed five percent (5%) of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to Paragraph 6.a. of this subsection.

9. Letters of Credit

a. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the director or his designee), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

b. The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence and/or willful misconduct.

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F. A specific security provided to a ceding insurer by an assuming insurer pursuant to Section VIII of this regulation shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this section.

Section VII. Credit for reinsurance required by law

Pursuant to Section 38-9-200(F), the director or his designee shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of Sections 38-9-200(B), (C), (D) or (E), but only as to the insurance of risks located in jurisdictions where the reinsurance is required by the applicable law or regulation of that jurisdiction. As used in this section, "jurisdiction" means state, district or territory of the United States and any lawful national government.

Section VIII. Asset or Reduction from liability for reinsurance ceded to an unauthorized assuming insurer not meeting the requirements of Sections III through VII

A. Pursuant to Section 38-9-210, the director or his designee shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of Section 38-9-200 in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations under the reinsurance contract. The security shall be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution as defined in Section 38-9-220. This security may be in the form of any of the following:

1. Cash;
2. Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets;
3. Clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified United States institution, as defined in Section 38-9-220, effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust for, the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs; or
4. Any other form of security acceptable to the director his designee.

B. An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to this Section shall be allowed only when the requirements of Sections XII and the applicable portions of Sections IX, X or XI of this regulation have been satisfied.

Section IX. Trust agreements qualified under Section VIII

A. As used in this section:

1. "Beneficiary" means the entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator or liquidator).

2. "Grantor" means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer.

3. "Obligations," as used in Subsection B.11. of this section, means:

- a. Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;
- b. Reserves for reinsured losses reported and outstanding;
- c. Reserves for reinsured losses incurred but not reported; and
- d. Reserves for allocated reinsured loss expenses and unearned premiums.

B. Required Conditions.

1. The trust agreement shall be entered into between the beneficiary, the grantor and a trustee which shall be a qualified United States financial institution as defined in Section 38-9-220.

2. The trust agreement shall create a trust account into which assets shall be deposited.

3. All assets in the trust account shall be held by the trustee at the trustee's office in the United States.

4. The trust agreement shall provide that:

a. The beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

b. No other statement or document is required to be presented in order to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

c. It is not subject to any conditions or qualifications outside of the trust agreement; and

d. It shall not contain references to any other agreements or documents except as provided for under Paragraph 11. of this subsection.

5. The trust agreement shall be established for the sole benefit of the beneficiary.

6. The trust agreement shall require the trustee to:

a. Receive assets and hold all assets in a safe place;

b. Determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate any such assets, without consent or signature from the grantor or any other person or entity;

c. Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

d. Notify the grantor and the beneficiary within ten (10) days, of any deposits to or withdrawals from the trust account;

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e. Upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and

f. Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account.

7. The trust agreement shall provide that at least thirty (30) days, but not more than forty-five (45) days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.

8. The trust agreement shall be made subject to and governed by the laws of the state in which the trust is domiciled.

9. The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the director or his designee), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

10. The trust agreement shall provide that the trustee shall be liable for its own negligence, willful misconduct or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence and/or willful misconduct.

11. Notwithstanding other provisions of this regulation, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

a. To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

b. To make payment to the assuming insurer of any amounts held in the trust account that exceed one hundred two percent (102%) of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

c. Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution as defined in Section 38-9-220 apart from its general assets, in trust for such uses and purposes specified in Subparagraphs a. and b. above as may remain executory after such withdrawal and for any period after the termination date.

12. Notwithstanding other provisions of this regulation, when a trust agreement is established to meet the requirements of Section VIII in conjunction with a reinsurance agreement covering life, annuities or accident and health risks, where it is customary to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without

diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

a. To pay or reimburse the ceding insurer for:

(1) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies; and

(2) The assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement;

b. To pay to the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; or

c. Where the ceding insurer has received notification of termination of the trust and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified U. S. financial institution apart from its general assets, in trust for the uses and purposes specified in Subparagraphs a and b of this paragraph as may remain executory after withdrawal and for any period after the termination date.

13. The reinsurance agreement may, but need not, contain the provisions required by Subsection D.1.b. of this section, so long as these required conditions are included in the trust agreement.

14. Notwithstanding any other provisions in the trust instrument, if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight or other designated receiver all of the assets of the trust fund. The assets shall be applied in accordance with the priority statutes and laws of the state in which the trust is domiciled applicable to the assets of insurance companies in liquidation. If the commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy claims of the U. S. beneficiaries of the trust, the assets or any part of them shall be returned to the trustee for distribution in accordance with the trust agreement.

C. Permitted Conditions.

1. The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than ninety (90) days after the beneficiary and grantor receive the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than ninety (90) days after the trustee and the beneficiary receive the notice, provided that no such resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.

2. The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any such interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.

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3. The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions which the trustee determines are at least equal in market value to the assets withdrawn and that are consistent with the restrictions in Subsection D.1.b. of this section.

4. The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. Such transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

5. The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered over to the grantor.

D. Additional Conditions Applicable To Reinsurance Agreements.

1. A reinsurance agreement may contain provisions that:

a. Require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specifying what the agreement is to cover;

b. Stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash (United States legal tender), certificates of deposit (issued by a United States bank and payable in United States legal tender), and investments permitted by the South Carolina Code of Laws or any combination of the above, provided investments in or issued by an entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust shall not exceed five percent (5%) of total investments. The reinsurance agreement may further specify the types of investments to be deposited. Where a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, then the trust agreement may contain the provisions required by this paragraph in lieu of including such provisions in the reinsurance agreement;

c. Require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or signature from the assuming insurer or any other entity;

d. Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

e. Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

(1) To pay or reimburse the ceding insurer for:

(i) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies;

(ii) The assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement; and

(iii) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

(2) To make payment to the assuming insurer of amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

2. The reinsurance agreement may also contain provisions that:

a. Give the assuming insurer the right to seek approval from the ceding insurer, which shall not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:

(1) The assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount, or

(2) After withdrawal and transfer, the market value of the trust account is no less than one hundred two percent (102%) of the required amount.

b. Provide for the return of any amount withdrawn in excess of the actual amounts required for Subsections D.1.e of this section, and for interest payments, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to Subsection D.1.e.

c. Permit the award by any arbitration panel or court of competent jurisdiction of:

(1) Interest at a rate different from that provided in Subparagraph b,

(2) Court of arbitration costs,

(3) Attorney's fees, and

(4) Any other reasonable expenses.

3. Financial reporting. A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this Department in compliance with the provisions of this regulation when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction shall be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

4. Existing agreements. Notwithstanding the effective date of this regulation, any trust agreement or underlying reinsurance agreement in existence prior to December 31, 1992, will continue to be acceptable until December 31, 1993, at which time the agreements will have to full comply with this regulation for the trust agreement to be acceptable.

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5. The failure of any trust agreement to specifically identify the beneficiary as defined in Subsection A of this section shall not be construed to affect any actions or rights which the director or his designee may take or possess pursuant to the provisions of the laws of this State.

Section X. Letters of credit qualified under Section VIII

A. The letter of credit must be clean, irrevocable unconditional and issued or confirmed by a qualified United States financial institution as defined in Section 38-9-220. The letter of credit shall contain an issue date and expiration date and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit shall also indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself shall not contain reference to any other agreements, documents or entities, except as provided in Subsection I.1. below. As used in this section, "beneficiary" means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator or liquidator).

B. The heading of the letter of credit may include a boxed section containing the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section shall be clearly marked to indicate that such information is for internal identification purposes only.

C. The letter of credit shall contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.

D. The term of the letter of credit shall be for at least one year and shall contain an "evergreen clause" which prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" shall provide for a period of no less than thirty (30) days' notice prior to expiration date or nonrenewal.

E. The letter of credit shall state whether it is subject to and governed by the laws of this State or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 500), or any successor publication, and all drafts drawn thereunder shall be presentable at an office in the United States of a qualified United States financial institution.

F. If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 500), or any successor publication, then the letter of credit shall specifically address and provide for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 17 of Publication 500 or any other successor publication, occur.

G. The letter of credit shall be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit, pursuant to Section 38-9-220.

H. If the letter of credit is issued by a qualified United States financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in Subsection G. of this section, then the following additional requirements shall be met:

1. The issuing qualified United States financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts, and

2. The "evergreen clause" shall provide for thirty (30) days' notice prior to expiry date for nonrenewal.

I. Reinsurance Agreement Provisions.

1. The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions which:

a. Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover.

b. Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:

(1) To pay or reimburse the ceding insurer for:

(i) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurers, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies; and

(ii) The assuming insurer's share, under the specific reinsurance agreement, of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurers, under the terms and provisions of the policies reinsured under the reinsurance agreement;

(iii) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

(2) Where the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount and where the assuming insurer's entire obligations under the specific reinsurance remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of the liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer and exceed the amount of any reduced or replacement letter of credit, and deposit those amounts in a separate account in the name of the ceding insurer in a qualified U. S. financial institution apart from its general assets, in trust for such uses and purposes specified in Subsection I.1.b.(1) of this section as may remain after withdrawal and for any period after the termination date.

c. All of the provisions of Paragraph 1. of this subsection shall be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

2. Nothing contained in Paragraph 1. of this subsection shall preclude the ceding insurer and assuming insurer from providing for:

a. An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to Paragraph 1.b. of this subsection; and/or

b. The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or any amounts that are subsequently determined not to be due.

Section XI. Other security

A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

Section XII. Reinsurance contract

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Credit will not be granted, nor an asset or reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of Sections III, IV, V, VI or VIII of this regulation or otherwise in compliance with Section 38-9-200 after the adoption of this regulation unless the reinsurance agreement:

A. Includes a proper insolvency clause pursuant to Section 38-27-510; and

B. Includes a provision pursuant to Section 38-9-200(G) whereby the assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give such court or panel jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decision of such court or panel.

Section XIII. Contracts affected

All new and renewal reinsurance transactions entered into after December 31, 1993, shall conform to the requirements of Sections 38-9-190 through 38-9-220 and this regulation if credit is to be given to the ceding insurer for such reinsurance.

Form AR-1 Certificate of assuming insurer

FORM AR-1

CERTIFICATE OF ASSUMING INSURER

I, _____, _____
(Name of Officer) (Title of Officer)
of _____, the assuming insurer under a
(Name of Assuming Insurer)
reinsurance contract with one or more insurers domiciled in South Carolina hereby certify that
_____ ("Assuming Insurer"):
(Name of Assuming Insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in South Carolina for the adjudication of any issues arising out of the reinsurance agreement(s), agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. Nothing in this paragraph constitutes or should be understood to constitute a waiver of Assuming Insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement(s) to arbitrate their disputes if such an obligation is created in the agreement(s).

2. Designates the director or his designee of South Carolina as its lawful attorney upon whom may be served any lawful process in any action, suit or proceeding arising out of the reinsurance agreement(s) instituted by or on behalf of the ceding insurer.

3. Submits to the authority of the director or his designee of South Carolina to examine its books and records and agrees to bear the expense of any such examination.

4. Submits with this form a current list of insurers domiciled in South Carolina reinsured by Assuming Insurer and undertakes to submit additions to or deletions from the list to the director or his designee at least once per calendar quarter.

Dated: _____
_____ (Name of Assuming Insurer)

BY: _____
(Name of Officer)

(Title of Officer)

Fiscal Impact Statement:

No additional state funding is requested.

Statement of Rationale:

No reports or studies were relied upon in the drafting of this regulation. The bases for this regulation are provisions from the National Association of Insurance Commissioners Model Law and Model Regulation.

Document No. 2931
DEPARTMENT OF LABOR, LICENSING AND REGULATION
ENVIRONMENTAL CERTIFICATION BOARD
CHAPTER 51
Statutory Authority: 1976 Code 40-23-70, 40-23-305, and 40-1-70

Synopsis:

The South Carolina Environmental Certification Board is amending Regulations 51-1 through 51-16 to give effect to 2002 Act No. 175. Some provisions of the existing regulations are no longer necessary under the Act. Others required significant revision to reflect the policies of the Act.

Instructions:

Delete current 51-1 through 51-16; replace with the following text (51-1 through 51-7).

Text:

51-1. Applications for Certification.

Any person who desires to become certified by the Board must make application on the proper form. The Board on request will furnish this form. The application for initial certification must be accompanied by a nonrefundable fee as specified in 51-6. An application for Well Driller or CPO/Spa that is not acted upon by the applicant within twelve (12) months of receipt by the Board shall become inactive.

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51-2. Examinations.

Examinations may consist of a written or oral examination as approved by the Board to determine if an applicant is qualified. An applicant may apply under the Americans' with Disabilities Act (ADA) and provide documentation for consideration of an oral exam.

An examination fee will be charged for each examination taken by an applicant.

Such examinations as may be prescribed under this rule will be administered at least four (4) times each year at times and places to be announced by the Board. The Administrator will appoint a person or persons who will prepare, administer, and grade the prescribed examinations. The Board will establish suitable criteria to establish acceptable performance on an examination.

Each examinee must receive official notice in writing from the Board that he/she has passed the examination before being permitted to advance to a higher grade examination.

51-3. Levels of Licensure, Requirements for Each Level, Operator-in-Charge Requirements for Facilities.

A. The Board shall certify qualified applicants in accordance with the levels of licensure defined in this article. In each case, the applicant must meet at least the minimum experience requirements set for the level of licensure being sought. Further, each applicant must comply with the examination requirements, as established in 51-4, relevant to the level of licensure desired.

B. An applicant's education, both degree-related and non-degree-related, may be considered by the Board in determining whether the applicant meets the experience requirements for licensure. However, no applicant shall receive a graded certificate without having completed at least one (1) year of actual operating experience. This applies for "C", "B" and "A" level licensure only.

C. There will be no additional application fee for an operator to progress from a lower license to a higher one. However, an examination fee will be charged for each examination taken by an applicant.

D. Licensees and applicants are responsible for notifying the board within fifteen (15) days, whenever they change employers and their position requires certification.

E. The levels of licensure for water treatment plant and water distribution operators, and the requirements for each level, are defined in §40-23-300, South Carolina Code of Laws, 1976 as amended.

F. The levels of licensure for physical/chemical wastewater treatment plant operators, and the requirements for each level, are defined as:

1. To be licensed by the Board as a "Trainee" physical/chemical wastewater treatment plant operator an applicant must:

- a. be at least eighteen years of age;
- b. have a high school diploma or the equivalent; and
- c. submit an application on forms approved by the Board and the prescribed fee.

2. To be licensed by the Board as "D" physical/chemical wastewater treatment operator an applicant must:

- a. hold a valid "Trainee" License;
- b. pass an examination approved by the Board;
- c. have completed at least one (1) year of actual operating experience at a physical/chemical wastewater facility, or the equivalent; and,
- d. submit an affidavit of employment documenting the experience.

3. To be licensed by the Board as a "C" physical/chemical wastewater treatment plant operator an applicant must:

- a. hold a valid "D" License;
- b. pass an examination approved by the Board;
- c. have completed at least two (2) years of actual operating experience at a physical /chemical wastewater facility , or the equivalent; and,
- d. submit an affidavit of employment documenting the experience.

4. To be licensed by the Board as a "B" physical/chemical wastewater treatment plant operator an applicant must:

- a. hold a valid "C" License;
- b. pass an examination approved by the Board;

- c. have completed at least three (3) years of actual operating experience at a physical/chemical wastewater facility, or the equivalent; and,
- d. submit an affidavit of employment documenting the experience.

5. To be licensed by the Board as an "A" physical/chemical wastewater treatment plant operator an applicant must:

- a. hold a valid "B" License;
- b. pass an examination approved by the Board;
- c. have completed at least four (4) years of actual operating experience at a physical/chemical wastewater facility, or the equivalent; and,
- d. submit an affidavit of employment documenting the experience.

G. The levels of licensure for biological wastewater treatment plant operators, and the requirements for each level, are defined as:

1. To be licensed by the Board as a "Trainee" biological wastewater treatment plant operator an applicant must:

- a. be at least eighteen (18) years of age;
- b. have a high school diploma or the equivalent; and,
- c. submit an application on forms approved by the Board and the prescribed fee.

2. To be licensed by the Board as a "D" biological wastewater treatment plant operator an applicant must:

- a. hold a valid "Trainee" License;
- b. pass an examination approved by the Board;
- c. have completed at least one (1) year of actual operating experience at a biological wastewater facility, or the equivalent; and,
- d. submit an affidavit of employment documenting the experience.

3. To be licensed by the Board as a "C" biological wastewater treatment plant operator an applicant must:

- a. hold a valid "D" Operator License;
- b. pass an examination approved by the Board;
- c. have completed at least two (2) years of actual operating experience at a biological wastewater facility, or the equivalent; and,
- d. submit an affidavit of employment documenting the experience.

4. To be licensed by the Board as a "B" biological wastewater treatment plant operator an applicant must:

- a. hold a valid "C" License;
- b. pass an examination approved by the Board;
- c. have completed at least three (3) years of actual operating experience at a biological wastewater facility, or the equivalent; and,
- d. submit an affidavit of employment documenting the experience.

5. To be licensed by the Board as an "A" biological wastewater treatment plant operator an applicant must:

- a. hold a valid "B" License;
- b. pass an examination approved by the Board;
- c. have completed at least four (4) years of actual operating experience at a biological wastewater facility, or the equivalent; and,
- d. submit an affidavit of employment documenting the experience.

H. The operator-in-charge of a biological wastewater treatment plant classified by the Department of Health and Environmental Control as requiring the services of a licensed operator must hold licensure as a biological wastewater treatment plant operator at a level no lower than the level of license designated for the classification or grouping assigned the plant by the Department of Health and Environmental Control:

- 1. Group IB wastewater treatment plants require an operator with at least a "D" license.
- 2. Group IIB wastewater treatment plants require an operator with at least a "C" license.
- 3. Group IIIB wastewater treatment plants require an operator with at least a "B" license.
- 4. Group IVB wastewater treatment plants require an operator with at least an "A" license.

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I. The operator-in-charge of a physical/chemical wastewater treatment plant classified by the Department of Health and Environmental Control as requiring the services of a certified operator must hold licensure as a physical/chemical wastewater treatment plant operator at a level no lower than the level of licensure designated for the classification or grouping assigned the plant by the Department of Health and Environmental Control.

1. Group I-P/C wastewater treatment plants require an operator with at least a "D" Physical/Chemical license.

2. Group II-P/C wastewater treatment plants require an operator with at least a "C" Physical/Chemical license.

3. Group III-P/C wastewater treatment plants require an operator with at least a "B" Physical/Chemical license.

4. Group IV-P/C wastewater treatment plants require an operator with at least an "A" Physical/Chemical license.

J. Actual operating experience shall be verified by an affidavit.

51-4. Renewal of License and Permit, Continuing Education.

A. Each license and each trainee permit issued by the Board shall be renewed annually on or before June 30 of each calendar year. Any certificate or permit not renewed by September 30 shall be considered lapsed and declared nonrenewable.

B. The Board shall charge a renewal fee, the amount of such fee to be fixed by the Board, in accordance with 51-6, at a meeting prior to July of each year. Renewal applications received between July 1 and September 30 each year shall be subject to a reinstatement fee of two hundred dollars (\$200.00).

C. A person who practices while a license is lapsed may be fined up to five hundred dollars (\$500.00).

D. A license or permit for which renewal is not applied for by September 30 of the renewal year shall be declared void and non-renewable.

E. A certificate revoked for cause by the Board may be reinstated only by action of the Board.

F. Each applicant applying for renewal of any license must provide evidence of having completed twelve (12) hours of relevant continuing education every two (2) years. In lieu of continuing education, the applicant may take and pass the appropriate examination for his/her license or permit grade.

51.5. Operator-in-Training Permits.

Biological Wastewater Operators, Physical/Chemical Wastewater Operators, Water Treatment Operators, and Water Distribution Operators.

A. For biological wastewater treatment operators, physical/chemical wastewater treatment operators, water treatment operators, and water distribution operators the Board shall issue "trainee" permits that are valid for two (2) years for new personnel with qualifications as stated in 51-3. Operation under this permit shall always be under the direct supervision of a legally licensed operator of the proper grade. All applications must be endorsed by the applicant's chief operator, or operator-in-charge.

Application for Trainee Permits.

A. Trainee permits will be valid only for the two (2) year period and will not be renewed except when an examination for a graded certificate has been passed or there are extenuating circumstances acceptable to the Board.

51-6. Fees. (Statutory Authority: 1976 Code 40-1-50, as amended)

As provided in Code 40-1-50, South Carolina Code of Laws, 1976, as amended, no fee charged by the Board shall exceed the amount of two hundred dollars (\$200.00).

51-7. Definitions.

As used in S.C. Code Title 40, Chapter 23, and these regulations

A. "Direct Supervision" means supervision provided by a licensee who must (a) be on-site or immediately available to supervised persons via telephone, radio, or other electronic means; and (b) maintain continued involvement in appropriate aspects of each professional activity of the supervisee.

Fiscal Impact Statement

There will be no cost incurred by the State of any of its political subdivisions.

Statement of Rationale:

There were no scientific or technical basis relied upon in developing the regulation.

Document No. 2909
DEPARTMENT OF LABOR, LICENSING AND REGULATION
OFFICE OF STATE FIRE MARSHAL
 CHAPTER 71

Statutory Authority: 1976 Code Section 23-36-80, as amended

Synopsis:

The Department of Labor, Licensing and Regulation, Office of State Fire Marshal, is revising existing regulations concerning the manufacturing, storage, handling, and use of explosives.

Instructions:

Replace existing Chapter 71, Article 8, Office of State Fire Marshal, in its entirety and insert the following text.

Text:

Statutory Authority: South Carolina Explosives Control Act Section 8

71-8302 Explosives.

A. The provisions contained in NFPA 495 entitled Explosive materials code, 2001 edition, including appendices A, B, C, and D.2 and D.3, shall constitute the minimum standard for the manufacture, transportation, use and storage for all explosives in South Carolina, except as modified herein.

71-8302.1 Definitions.

A. Words not defined in this section shall have the meaning stated in the referenced standard adopted by this regulation.

1. "Ammonium nitrate" means the ammonium salt of nitric acid represented by the formula NH_4NO_3 .
2. "Authorized, approved, or approval" means authorized, approved, or approval by the South Carolina State Fire Marshal.
3. "AHJ" means Authority Having Jurisdiction which is the State Fire Marshal or his appointed agents.
4. "Issuing authority" means the Office of the South Carolina State Fire Marshal.

71-8302.2 Exceptions.

The following code sections in NFPA 495 are not adopted in South Carolina:

Section 1.1.3
 Section 4.1.8
 Section 4.6.3
 Section 4.7.1 note (2)
 Section 7.3.5 Exception 2
 Appendix A section A.1.4

56 FINAL REGULATIONS

This regulation does not apply to the sale or storage of fireworks as regulated by the Department of LLR, Board of Pyrotechnic Safety.

71-8302.3 Licenses and Permits for the Sale, Storage, and Use of Explosive Materials.

A. Licenses

Licenses and permits shall be obtained from the State Fire Marshal as based upon the requirements in Section 23-36-40 of SC Code of Laws and NFPA 495 Table 4.3.2

B. Restrictions.

The following are restrictions that apply to all licenses:

1. No license shall be assigned or transferred;
2. Licenses shall be classified, dated, numbered, and be valid for two years from date of issue;
3. A blaster's license shall bear name, address, photograph, and any other identifying information as deemed necessary by the State Fire Marshal;
4. Criminal background checks shall be conducted on all blaster license applicants. All checks shall be conducted at the expense of the applicant for licensure.

C. Blasting Permits.

1. Permits for blasting shall include the following information:
 - a. site of blasting;
 - b. name and license number of blaster;
 - c. amount and type of explosive materials;
 - d. proximity of gas lines, power transmission lines, public roads, and waterways;
 - e. purpose of blasting; and
 - f. corporate name, if any.

D. Magazine Permits.

1. The permit form shall contain the following information regarding the exact physical location:
 - a. town and county;
 - b. street address;
 - c. location from other magazines and buildings;
 - d. owner's name;
 - e. quantity of explosives being stored;
 - f. license number (dealer or blaster); and
 - g. type of explosive materials.
2. Prior to use, each magazine shall be inspected and approved by personnel of the Office of State Fire Marshal.
3. All magazines shall be placarded on all four sides. Placards shall be a minimum of 8 inches in height, and letters of at least 3 inches in height.
4. Giving false information or making a misrepresentation to obtain a license or permit.

E. The State Fire Marshal may suspend a license or permit pending disposition of a felony charge brought against a licensee or permittee which involves the use of explosives. The State Fire Marshal may accept a relief from disability incurred by reason of a criminal conviction of any crime punishable by a term of imprisonment exceeding two years that has been granted by the Director of the Bureau of Alcohol, Tobacco and Firearms, United States Department of the Treasury, Washington, D.C., pursuant to Section 55.142, Subpart H, Title 27, Code of Federal Regulations and Title 18 United States Code, Chapter 40, Section 845(b).

71-8302.4 Reserved

71-8302.5 Reserved

71-8302.6 Reserved

71-8302.7 Reserved

71-8302.8 Reserved

71-8302.9 Reserved

71-8302.10 Records.

A. Each licensed blaster shall keep records of each blast. All records including seismograph reports shall be retained for at least five years and shall be available for inspection by the Office of State Fire Marshal and shall contain the following minimum data:

1. name of company or contractor;
2. location, date, and time of blast;
3. name, signature, and license number of blaster in charge;
4. type of material blasted;
5. number of holes, burden and spacing;
6. diameter and depth of holes;
7. types of explosives used;
8. total amount of explosives used;
9. maximum amount of explosives per delay period of 8 milliseconds or greater;
10. method of firing and type of circuit;
11. direction and distance in feet to nearest dwelling house, public building, school, church, commercial or institutional building neither owned nor leased by the person conducting the blasting;
12. weather conditions;
13. type and height or length of stemming;
14. whether mats or other protections were used;
15. type of delay electric blasting caps used and delay periods used;
16. exact location of seismograph, if used, and the distance of seismograph from blast as indicated accurately by the person taking the seismograph reading;
17. seismograph records, where required including:
 - a. name of person and firm analyzing the seismograph record; and
 - b. seismograph reading
18. maximum number of holes per delay period of eight milliseconds or greater; and
19. blaster's report if deemed necessary by Office of State Fire Marshal. This report will be completed on forms provided by the Office and submitted within three working days of the blast.

71-8302.11 Blasting Safety.

A. This section sets forth additional requirements to supplement NFPA 495 and provide for safe blasting operations.

1. If, as a result of a blast, the vibrational levels are exceeded or material is hurled through the air causing damage to homes or other property, or causing personal injury or death, or endangering public safety, health and general welfare, in violation of these regulations, the Office of State Fire Marshal may consider this due cause for revocation of blaster's license and assess penalties.

2. The contractor or operator, as well as the blaster, shall be responsible for the conduct of blasting on any operation.

3. These regulations are in no way intended to relieve the contractor or operator or other persons of responsibility and liability under any other laws.

4. The State Fire Marshal may require a seismograph be used on any blasting operation in which he feels that damage to personal property has or may occur.

5. A seismograph shall be used on all blasting operations that occur within 1500 feet of an inhabited structure, and in every instance where the scaled distances shown in NFPA 495 are not followed with the written approval of the State Fire Marshal.

71-8302.12 Reserved

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71-8302.13 Reserved

71-8302.14 Reserved

71-8302.15 Reserved

71-8302.16 Reserved

71-8302.17 Reserved

71-8302.18 Firing the Blast.

A. This section sets forth additional requirements for firing the blast.

1. A warning signal shall be given before every blast. Warning signals shall comply with the following:
 - a. Warning signal is a 1 minute series of long horn or siren blasts 5 minutes prior to the blast signal.
 - b. Blast signal is a series of short horn or siren blasts 1 minute prior to the shot.
 - c. All clear signal is a prolonged horn or siren blast following the inspection of the blast area.
2. Before a blast is fired, a loud warning signal shall be given by the licensed blaster in charge, who has made certain that all surplus explosives have been returned to the magazine, and all employees, vehicles, and equipment are at a safe distance or under sufficient cover.

71-8302.19 Reserved

71-8302.20 Reserved

71-8302.21 Reserved

71-8302.22 Reserved

71-8302.23 Reserved

71-8302.24 Explosives Investigations.

A. All costs incurred by the State Fire Marshal for investigations involving explosives or blasting operations shall be reimbursed to the State by the individual or company involved in the investigation. Such reimbursements will only apply when the individual or company has been found in violation of the State Explosives Control Act or these Regulations.

71-8302.25 Variances.

A. This section provides licensees and permittees the opportunity to request variances of the promulgated regulations under specific conditions.

1. The State Fire Marshal may grant variances if it can be demonstrated the variance improves safety conditions or that the variance will provide such safe conditions as those which would prevail if there was compliance with the standard.

2. Such a variance may be modified or revoked by the State Fire Marshal.

Statement of Rationale:

The State of South Carolina did not directly employ a scientific or technical basis to develop this regulation. The State relied upon the scientific and technical expertise of the National Fire Protection Association (NFPA). The NFPA uses a consensus system to evaluate the various data available. The NFPA 495 was drafted as a national consensus standard for the manufacture, transportation, storage and use of explosive materials. The table of

distances in the standard were established based upon scientific studies by the federal government, National Institute of Occupational Safety and Health, and the Federal Bureau of Mines. Current regulations, which will be replaced by NFPA 495, do not follow the national standards adopted by the federal government. The SC State Fire Marshal's Office investigated four complaints in 2002 where blasting damaged homes. This damage may not have occurred if the proper table of distances, as developed by the federal government, had been adopted and used.

Fiscal Impact Statement:

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

Document No. 2907
DEPARTMENT OF REVENUE

CHAPTER 7

Statutory Authority: 1976 Code Section 12-4-320 and 61-2-60

7-702.5 Drive-In/Drive-Thru Establishments Prohibited

Synopsis:

The South Carolina Department of Revenue is considering amending SC Regulation 7-702 to add subsection 7-702.5 concerning a prohibition against selling or delivering beer or wine to anyone who remains in a motor vehicle during the transaction. This regulation is specifically intended to prohibit the sale of beer and wine at drive-in/drive-thru establishments and on a curbside service basis. This will incorporate the provisions of former SC Regulation 7-98, which was inadvertently deleted during the drafting process last year in which all alcoholic beverage regulations were reorganized by subject matter. This proposal will add subsection 7-702.5 to read as follows:

7-702.5 Drive-In/Drive-Thru Establishments Prohibited

A permit holder, employee of a permit holder, or agent of a holder must not sell or deliver beer or wine to anyone who remains in a motor vehicle during the transaction. This regulation is specifically intended to prohibit the sale of beer and wine at drive-in/drive-thru establishments and on a curbside service basis.

Instructions: Amend SC Regulation 7-702 to add subsection 7-702.5 concerning a prohibition against selling or delivering beer or wine to anyone who remains in a motor vehicle during the transaction.

Text:

7-702.5 Drive-In/Drive-Thru Establishments Prohibited

A permit holder, employee of a permit holder, or agent of a holder must not sell or deliver beer or wine to anyone who remains in a motor vehicle during the transaction. This regulation is specifically intended to prohibit the sale of beer and wine at drive-in/drive-thru establishments and on a curbside service basis.

Fiscal Impact Statement:

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

60 FINAL REGULATIONS

Statement of Rationale:

The purpose of this proposal is to amend SC Regulation 7-702 to add subsection 7-702.5 concerning a prohibition against selling or delivering beer or wine to anyone who remains in a motor vehicle during the transaction. This regulation is specifically intended to prohibit the sale of beer and wine at drive-in/drive-thru establishments and on a curbside service basis. This proposal will incorporate the provisions of former SC Regulation 7-98, which was inadvertently deleted during the drafting process last year in which all alcoholic beverage regulations were reorganized by subject matter.

Document No. 2906
DEPARTMENT OF REVENUE
CHAPTER 117
Statutory Authority: 1976 Code Section 12-4-320

Article 9 of Chapter 117 of the Code of Regulations which includes the following regulations:

<u>SC Regulation</u>	<u>Subject</u>
117-190	Definition – “Single Place” or “Premises”
117-190.1	Definition – “Inducements”
117-190.2	Definition – “Advertising”
117-190.3	Definition – “Measurement of Distance”

Synopsis:

The South Carolina Department of Revenue is considering repealing Article 9 of Chapter 117 of the Code of Regulations (SC Regulations 117-190, 117-190.1, 117-190.2, and 117-190.3) since these regulations are no longer needed due to changes in the law. These regulations concerned locations that operated video poker machines and such machines are now illegal in South Carolina.

Instructions: Repeal Article 9 of Chapter 117 (SC Regulations 117-190, 117-190.1, 117-190.2, and 117-190.3). These regulations are no longer needed due to changes in the law.

Text:

No text is necessary since the proposal is only repealing various regulations that are 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.

Statement of Rationale:

The purpose of this proposal is to repeal Article 9 of Chapter 117 of the Code of Regulations (SC Regulations 117-190, 117-190.1, 117-190.2, and 117-190.3) since these regulations are no longer needed due to changes in the law. These regulations concerned locations that operated video poker machines and such machines are now illegal in South Carolina.